

*United States Court of Appeals
for the
District of Columbia Circuit*



**TRANSCRIPT OF
RECORD**

34

BRIEF FOR APPELLANT JAMES A. WILDER

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 71-1167

United States of America, Appellee

v.

James A. Wilder, Appellant

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals
for the District of Columbia Circuit

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Nathan J. Carlson

William W. Kramer
1111 Massachusetts Ave., N.W.
Washington, D. C. 20005
Attorney for Appellant
(Appointed by this Court)

TABLE OF CONTENTS

	<u>PAGE</u>
STATEMENT OF ISSUES PRESENTED FOR REVIEW ---	1
STATUTES, RULES and REGULATIONS -----	2
REFERENCES TO RULINGS -----	5
STATEMENT OF CASE -----	7
ARGUMENT -----	12
CONCLUSION -----	33

TABLE OF CASES, STATUTES and OTHER OTHER AUTHORITIES

CASES

* <u>Abbate v. United States</u> , 359 U.S. 187, 196 (1959) -----	18,23
* <u>Ashe v. Swenson</u> , 397 U.S. 436, 449 (1970) -----	18,19,21,22 23,25,28
<u>Ball v. United States</u> , 349 U.S. 81 (1955)-----	14,22
<u>Bennett v. State</u> , 229 Md 208, 182 A 2d (1962) -----	13
<u>Benton v. Maryland</u> , 395 U.S. 784, 794 (1969) -----	15
<u>Blockburger v. United States</u> , 284 U.S. 299, 304 (1932) -----	19
<u>Brock v. North Carolina</u> , 344 U.S. 424 (1953) -----	15
<u>Coffey v. United States</u> , 116 U.S. 436, 443 (1886) -----	20

* Cases chiefly relied upon are marked by asterisks.

<u>District of Columbia v. Buckley</u> , 75 U.S. App. D.C. 301, 128 F 2d 17, 22 (1942)-----	27
<u>Ex Parte Lange</u> , 18 Wall (U.S.) 163, 21 L. ed 872 (1873) -----	13,14,22
<u>Frank v. Mangum</u> , 237 U.S. 309, 333-4 (1915) -----	20
<u>Gavieres v. United States</u> , 220 U.S. 338 (1911) -----	17,29
<u>Gore v. United States</u> , 357 U.S. 386 (1958) -----	19
<u>Grafton v. United States</u> , 206 U.S. 333 (1907) -----	15
<u>Green v. United States</u> , 355 U.S. 184, 187 (1957) -----	14,18
<u>Heflin v. United States</u> , 358 U.S. 415 (1959) -----	14
<u>Kepner v. United States</u> , 195 U.S. 100 (1904) -----	14
<u>North Carolina v. Pearce</u> , 395 U.S. 711 (1969) -----	15
<u>People v. Allison</u> , Ill. Sup. Ct., 9/22/70 cited in 8CRL 2015, Oct. 7, 1970 -----	16
<u>Prince v. United States</u> , 352 U.S. 322 (1937) -----	14
<u>Randolph v. District of Columbia</u> , 156 A 2d 686, 688, (1959) -----	16
* <u>Re Neilson</u> , 131 U.S. 176 (1889) -----	20, 30, 31
<u>Sealfon v. United States</u> , 332 U.S. 575 (1948) -----	20

<u>State v. Ahuna</u> , Haw. Sup. Ct., 9/30/70 cited in 8 CR L 2015, Nov. 4, 1970 -----	16,29
<u>State v. Fletcher</u> , 22 Ohio App 2d 83, 259 NE 2d 146, 155 -----	22
<u>State v. Hoag</u> , 356, U.S. 464 (1958) -----	24
<u>United States v. Benz</u> , 282 U.S. 304, 307-09 (1931) -----	14
<u>United States Ex Rel Brown v. Hendrick</u> , 431 F 2d 436 (6th Cir. 1970) -----	23
<u>United States v. Lanza</u> , 260 U.S. 373 (1922) -----	15
<u>United States v. Oppenheimer</u> , 242 U.S. 85, 88 (1916) -----	20
* <u>United States v. Rollerson</u> , U.S. App.D.C. No. 24,154, Apr 13, 1971 -----	12,17
<u>United States v. Sabella</u> , 272 F 2d 206, 211 (2d Cir. 1959) -----	13,19
<u>United States v. Williams</u> , 431 F 2d 1168 (5th Cir. 1970) -----	23
* <u>Waller v. Florida</u> , 397 U.S. 387 (1970) -----	16

CONSTITUTION, STATUTES and REGULATIONS

Amendment V, Constitution of the United States-	12
22 D.C. Code 320-----	31
22 D.C. Code 3204 -----	2
25.	

Police Regulations of the District of Columbia	
Article 51 Section 1 -----	26
Section 6 -----	26
Article 52 Section 2(a) -----	26
Section 6 -----	26

OTHER AUTHORITIES

1 Annals of Congress [1789-91] at 433 (1834) -----	13
Comment, Statutory Implementation of Double Jeopardy Clauses, New Life for a Moribund Constitutional Guarantee, 65 Yale L.J. 339 (1956) -----	18
Kirchheimer, The Act, The Offense and Double Jeopardy, 58 Yale L.J. 513 (1949) -----	18
Twice in Jeopardy, 75 Yale L.J. 262 (1965) --	18
Federal Rules of Civil Procedure, Rules 13, 14, 18, 19, 20, 23, 24 -----	24
Federal Rules of Criminal Procedure, Rule 8(a)-----	24

QUESTION ARGUED AND PRESENTED FOR REVIEW

1. Whether the Double Jeopardy Clause of the Fifth Amendment to the Constitution of the United States precludes the United States from bringing to trial and punishing the same defendant for a violation of the District of Columbia Code in a second criminal prosecution after the defendant had been convicted and punished, upon his plea of guilty, in an earlier criminal prosecution brought by the District of Columbia for the commission of a closely related offense arising from the same transaction?

2. Whether the Court below erred as a matter of law when it denied appellant's pre-trial Motion TO DISMISS INDICTMENT on the grounds that the prosecution of the defendant for another greater offense arising out of the same transaction would constitute double jeopardy in violation of the Constitution of the United States?

This case has not previously been before this Honorable Court under the same or a similar title.

STATUTES, RULES and REGULATIONS

AMENDMENT V, Constitution of the United States

No person shall be held to answer for a capital, or otherwise infamous crime, unless in a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

22DC Code 3204

No person shall within the District of Columbia carry either openly or concealed on or about his person, except in his dwelling house or place of business or on other land possessed by him, a pistol, without a licence therefor issued as hereinafter provided, or any deadly or dangerous weapon capable of being so concealed. Whoever violates this section shall be punished as provided in section 22-3215, unless the violation occurs after he has been convicted in the District of Columbia of a violation of this section or of a felony, either in the District of Columbia or in another jurisdiction, in which

case he shall be sentenced to imprisonment for not more than ten years.

Police Regulations of the District of Columbia
**"Article 51. REQUIRING THE REGISTRATION OF FIREARMS
IN THE DISTRICT OF COLUMBIA**

Section 1. Except as herein provided, no person shall within the District, possess, or keep under his control, or sell or otherwise dispose of any pistol, or rifle or shotgun unless such person is the holder of a valid registration certificate for such pistol, rifle or shotgun."

* * * * *

"Section 6. Any person within the District of Columbia carrying or having in his immediate possession any pistol, rifle or shotgun for which a registration certificate has been issued as provided in these Regulations shall have such certificate on his person or within his immediate custody. Any person having such possession of a pistol, rifle or shotgun shall upon demand exhibit such certificate to a law enforcement officer. The failure of any person to exhibit such certificate as provided herein shall be cause for the revocation of any and all certificates issued to him under these Regulations.

Article 52. REGULATING THE SALE AND CARRYING OF
FIREARMS IN THE DISTRICT OF COLUMBIA

Section 2(a) No person shall carry either openly or concealed on or about his person any pistol unless he possesses a valid license therefor issued to him pursuant to Sec. 4 of the Act (D.C.Code, Sec. 22-3204); except as otherwise authorized by said section of the Act.

(b) * * * * *

Section 6. Any person in the District carrying or having in his possession any pistol for which a license has been issued to him pursuant to Sec. 6 of the Act (D.C.Code, Sec. 22-3206), * * * * shall have such license within his immediate possession, and upon demand of any law enforcement officer shall exhibit his license.

REFERENCES TO RULINGS

Although specific findings of fact and conclusions of law concerning the ruling on the Double Jeopardy issue in this case were neither requested nor formally given, the Honorable George L. Hart, Jr., United States District Judge, appears to have set forth the basis of his ruling denying Mr. Wilder's motion to dismiss the indictment during colloquy with counsel. Among the considerations apparently underlying the Court's ruling were that:

(a) possessing an unregistered firearm is not a lesser included offense of carrying a dangerous weapon (T-H, p. 6).¹ This is so because a different permit than the registration is required. (T-H, p. 7).

(b) If Mr. Wilder had been tried in a single trial on both counts, and been convicted of both the misdemeanor and felony charge, the Court "would feel quite free to give consecutive sentences." (T-H, p. 14).

(c) The offenses are two entirely separate and different crimes which happen to have been discovered at the same time. (T-H, p. 20).

In making his ruling, the Honorable Judge George L. Hart, Jr. specifically rejected the Government's argument that even if both offenses were the "same offense" the United States would not be precluded from proceeding

¹. "T-H" refers to Hearing on Motion Transcript, 7/16/70

to try and punish a defendant anew because the United States constitutes a separate and distinct sovereign than the District of Columbia Government. (T-H, p. 15-16).

STATEMENT OF CASE

This case is an appeal from a conviction in the United States District Court for the District of Columbia on one count alleging a violation of 22 D.C. Code 3204 by appellant, James A. Wilder (hereafter referred to as Mr. Wilder).

In the indictment, filed June 8, 1970, the Grand Jury charged as follows:

"On or about April 6, 1970, within the District of Columbia, James A. Wilder did carry, openly and concealed on or about his person, and not in his dwelling house and not in his place of business and not on other land possessed by him, a dangerous weapon capable of being so concealed, that is, a pistol, without a license therefor issued as provided by law."

After Mr. Wilder's pre-trial Motion to Dismiss Indictment on grounds that prosecution was precluded by the Double Jeopardy Clause of the Constitution was denied on July 16, 1970 by the Honorable George L. Hart, Jr., United Stated District Judge, Mr. Wilder waived his right to a jury trial and was tried by the Court on his plea of not guilty. A verdict of guilty was returned by the Court on October 15, 1970. Thereafter Mr. Wilder was sentenced by the Honorable Judge Hart to be imprisoned for a term of one to three years

with provision that the sentence be consecutive to any sentence imposed prior to the date of such sentencing, February 12, 1971. Mr. Wilder was permitted to remain on personal recognizance pending appeal. An appeal to this Court was duly filed on February 17, 1971.

In addition to the foregoing statement of the nature of this case, the course of proceedings, and its disposition in the court below, facts relevant to the issues presented for review appear primarily in the Motion to Dismiss Indictment filed July 6, 1970 and the transcript of the "Hearing on Motion," a hearing before the Honorable George L. Hart, Jr., United States District Judge on July 16, 1970. Although no evidence was specifically introduced by way of stipulation of facts or otherwise concerning the prior trial and punishment in the Court of General Sessions, the factual statements made by Mr. Wilder's trial defense counsel were not disputed by counsel for the government and were apparently regarded as true and correct by all parties to the proceedings.²

2. Inquiry by Mr. Wilder's appellate counsel failed to disclose the existence of any transcript of proceedings in the District of Columbia Court of General Sessions nor stenographic notes from which a transcript could be prepared. The Criminal Case Jacket, in Case No. 13223-70, of questionable reliability in view of a number of strike-overs and trial defense counsel's representations to the contrary, indicates that Mr. Wilder pleaded guilty and was punished for Ammunitions Violations D198 in that he did on April 6, 1970 possess ammunition without being the holder of a valid registration certificate.

(Continued on next page)

At the hearing on the motion to dismiss the indictment, it was asserted by trial defense counsel that concurrently with the lodging by the Government of a felony charge of carrying a dangerous weapon, the Office of the Corporation Counsel for the District of Columbia filed two informations charging Mr. Wilder with two violations of local Police Regulations, one dealing with "failure to register a firearm," the other with "possessing unregistered bullets or ammunition" (T-H, P. 2-3). On April 16, 1970, a preliminary hearing (presumably on the felony charge) was held before the Honorable Tom

Note 2 (Continued)

for a firearm in violation of Article 53, Section 2 of the Police Regulations of the District of Columbia. Moreover, the entries on the jacket cover indicate a Nolle Prossenti of the Count alleging that Mr. Wilder did FAIL TO REGISTER FIREARM D197 in that he did at the same time and place possess a certain pistol without being the holder of a valid registration certificate in violation of Article 51, Section 1, of the Police Regulations of the District of Columbia. When this discrepancy was called to the attention of the trial defense counsel, Sol Rosen, Esq., who represented Mr. Wilder in both trials, he reaffirmed the accuracy of his recollection and representations (and offered to attest thereto in an affidavit). In any event, it is submitted that if the prior trial and punishment were for the Count of possession of ammunition without a valid registration for a firearm, Mr. Wilder's claim of Double Jeopardy would have equal or greater validity than that claimed by trial defense counsel because of previous trial and punishment on a Count of possessing a pistol without a valid registration. Under the circumstances, even if trial defense counsel's factual predicate for his motion to dismiss the indictment on grounds of double jeopardy was incorrect, no waiver of claim of double jeopardy should be contenanced by this Honorable Court.

Scalley which resulted in Mr. Wilder's being held for the action of the Grand Jury. (T-H, p. 3). On April 17, 1970, Mr. Wilder pleaded guilty to the charge of failing to register a firearm, the Government nolle prossed the charge relating to the ammunition, and Mr. Wilder was sentenced to be imprisoned for ten days, with credit being given for time in custody. (T-H, p.3). Each charge arose from Mr. Wilder's possession of a pistol on April 6, 1970 and alleged that date as its date of commission. (T-H, p. 4).

Although not introduced during the hearing, facts later developed during the trial on October 15, 1970 before the Honorable George L. Hart, Jr., United States District Judge, showed that Mr. Wilder was arrested on April 6, 1970 by Officer James L. Hardy of the Metropolitan Police Department.³ The factual basis for the arrest were Officer Hardy's personal observations at Kanes Tavern, 5424 Georgia Avenue. (T-T, p.4). Officer Hardy observed that during what appeared to be an argument with the proprietor, Mr. Wilder removed

Note 3: Official Transcript of Proceedings of trial, dated October 15, 1970, is referred to hereinafter as "T-T."

from his left front pocket a small hand gun and made threatening remarks to the proprietor at that time.

(T-T, p. 6). As a result, Mr. Wilder was arrested and a small 6.35 millimeter hand gun was taken from him by Officer Hardy. (T-T, p.6). The gun was loaded with eight rounds of ammunition at the time. (T-T, p.9) Mr. Wilder had no license for the gun, which was subsequently test-fired in Officer Hardy's presence.

(T-T, p. 8).

ARGUMENT

To set the framework for application of the law to the facts of this case it is considered necessary to discuss the history and the development of the law relating to the Double Jeopardy Clause of the Fifth Amendment to the Constitution of the United States. In this regard, this Honorable Court has indicated recently that the sense and meaning of this Constitutional safeguard are currently subjects of judicial construction. United States v. Rollerson, U.S. App. D.C. No. 24,154, April 13, 1971. Because the legal yardstick by which a claim of double jeopardy is to be measured is far from clear, it is important first to determine what the applicable test should be under the law.

The Fifth Amendment to the Constitution of the United States provides pertinently:

"*** nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb;
***"

This provision of the Constitution is consistent with the common law principle that a man shall not

be brought into danger of his life or limb for one and the same offense more than once. Ex parte Lange, 18 Wall(US) 163, 21 L. ed 872 (1873); Bennett v. State, 229 Md. 208, 182A 2d 215 (1962). This constitutional safeguard was derived from the ancient pleas of autrefois acquit and autrefois convict. Such pleas could be made only by a defendant who had been previously tried and convicted or acquitted of a charge. It was not available to a defendant to a multiple count indictment who had not been tried before on any of the charges. United States v. Sabella, 272 F.2d 206, 211 (2d Cir. 1959).

Although the words "trial" and "punishment" are not specifically expressed in the Fifth Amendment, Madison's original proposal for the double jeopardy clause contained a provision that:

"No person shall be subject ... to more than one punishment or one trial for the same offense."

1 Annals of Congress [1789-91] at 433 (1834) (Under-scoring supplied) Thus, it appears that the Double Jeopardy Clause not only prohibits a second punishment for the same offense but also proscribes a second trial for the same offense, whether the defendant was

acquitted or convicted at the former trial. Kepner v. United States, 195 US 100. (1904)

With regard to multiple punishment for the same offense, the Supreme Court stated in Ex Parte Lange, supra at 173, that:

"the Constitution was designed as much to prevent the criminal from being twice punished for the same offense as from being twice tried for it."

The foregoing passage was cited with approval in United States v. Benz, 282 US 304, 307-09 (1931). See also Ball v. United States, 349 US 81 (1955); Prince v. United States, 352 US 322 (1937); Heflin v. United States, 358 US 415 (1959).

The prohibition against multiple trials for the same offense has the Constitutional purpose of preventing the Government from continued harassment of a person by repeated prosecutions,

"thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity..." Green v. United States, 355 US 184, 187 (1957).

The sweep of the Fifth Amendment's Double Jeopardy Clause had been applied in the past only to proceedings

in federal tribunals Brock v. North Carolina, 344 US 424 (1953). Thus, protection was afforded to persons subjected to a second prosecution under authority of the Federal Government after first being tried for the same offense under the same authority.

United States v. Lanza, 260 US 373 (1922). However, the Supreme Court has clarified the Constitutional dimensions of the Double Jeopardy Clause by holding that its prohibitions represent a fundamental ideal in our Constitutional heritage, and that its principles apply to the States through the Fourteenth Amendment. Benton v. Maryland, 395 US 784, 794 (1969), a decision having fully retroactive effect, North Carolina v. Pearce, 395 US 711 (1969).

The principle that double jeopardy applies when there is a second trial for the same offense in a differently constituted tribunal of the same sovereign was expressed in Grafton v. United States, 206 US 333 (1907), a case involving trials by a court-martial and civil court. This Constitutional concept was reaffirmed recently in a unanimous decision of the Supreme Court holding that the Double Jeopardy Clause prohibited the State of Florida from trying a defendant

for grand larceny following his conviction by a Municipal Court for disturbing the peace and destruction of city property based on the same acts. Waller v. Florida, 397 US 387 (1970). This recent Supreme Court decision clearly overrules the holding and dual sovereignty concept expressed by the then Municipal Court of Appeals for the District of Columbia in Randolph v. District of Columbia, 156 A 2d 686, 688 (1959). In that case, it was held that where defendant was acquitted of negligent homicide, an offense against the United States, he might later be convicted in a Municipal Court for failing to give his full time and attention to the operation of his vehicle at the same time. That decision was based on the misconception that double jeopardy provisions were inapplicable because the United States and District of Columbia are separate and distinct sovereign entities. See also State v. Ahuna, Haw. Sup. Ct., 9/30/70, cited in 3 Cr L 20 76, November 4, 1970; and People v. Allison, Ill. Sup. Ct., 9/22/70, cited in 8 Cr L 2015, October 7, 1970.

Probably the most vexing problem concerning the Double Jeopardy Clause is a determination of the

sense and meaning of the phrase "same offense" in the Fifth Amendment. In Gavieres v. United States, 220 US 338 (1911) the Supreme Court endorsed the so-called "same evidence" test in a case where petitioners had been first convicted of disorderly conduct, and then of insulting a public officer, essentially the same conduct. The Court held:

"A conviction or acquittal upon one indictment is no bar to a subsequent conviction and sentence upon another, unless the evidence required to support a conviction upon one of them would have been sufficient to warrant a conviction upon the other. The test is not whether the defendant has already been tried for the same act, but whether he has been put in jeopardy for the same offense. A single act may be an offense against two statutes; and if each statute requires proof of an additional fact which the other does not, an acquittal or conviction under either statute does not exempt the defendant from prosecution and punishment under the other."

The foregoing "same evidence" test may and should no longer be the law, for as this Honorable Court stated in United States v. Rollerson, supra,

the Gavieres rule as a binding interpretation of the Fifth Amendment's Double Jeopardy Clause is in some doubt as the applicable law construed in that decision was a congressional statute applicable to the Phillipine Islands, but not the Constitution, Green v. United States, 355 US 184 (1957). Moreover the "same evidence" rule has been severely criticized in academic writings and judicial decisions, "most notably in Mr. Justice Brennan's concurring opinions in Abbate v. United States, 359 US 187, 196 (1959) and Ashe v. Swenson, 397 US 436, 449 (1970)." See generally, Note, Twice in Jeopardy, 75 Yale L. J. 262 (1965); Comment, Statutory Implementation of Double Jeopardy Clauses, New Life for a Moribund Constitutional Guarantee, 65 Yale L. J. 339 (1956); Kirchheimer, The Act, The Offense and Double Jeopardy, 58 Yale L. J. 513 (1949).

Another expression of the "same evidence" rule is the so-called Blockburger test that:

"Where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires

proof of a fact which the other does not." Blockburger v. United States, 284 US 299, 304 (1932). Cf Gore v. United States, 357 US 386 (1958). In this regard, Mr. Justice Brennan pointed out significantly in Ashe v. Swenson, *supra*, at 196:

"But so far as appears, neither the "same evidence" test nor a "separate interests" test has been sanctioned by this Court under the Fifth Amendment except in cases in which consecutive sentences were imposed on conviction of several offenses at one trial."

In this case, where Mr. Wilder was twice tried and punished on closely related aspects of a single transaction, a different constitutional issue is presented than had he been punished separately and consecutively in a single trial. See United States v. Sabella, 272 F. 2d 206 (2d Cir. 1959).

In construing the Fifth Amendment in cases of multiple prosecutions, the Courts have recognized that they need not decide that both trials involved the "same offense" within the literal language of the Double Jeopardy Clause. Thus, it is generally held that a prosecution for any part of a single crime

bars any further prosecution based on the whole or a part of the same offense. See Re Nielson, 131 US 176 (1899). Additionally, there has developed a doctrine of collateral estoppel to give true meaning to the underlying principle that a man should not be placed twice in jeopardy even though the Double Jeopardy Clause was technically inapplicable. Coffey v. United States, 116 US 436, 443 (1886); see also Frank v. Mangum, 237 US 309, 333-4 (1915). With regard to its application to criminal prosecutions, Mr. Justice Holmes stated:

"The safeguard provided by the Constitution against the gravest abuses has tended to give the impression that when it did not apply in terms, there was no other principle that could. But the Fifth Amendment was not intended to do away with what in the civil law is a fundamental principle of justice . . ." United States v. Oppenheimer, 242 US 85, 88 (1916).

The doctrine of collateral estoppel has been an established rule of Federal criminal law since the case of United States v. Oppenheimer was decided in 1916. See Sealfon v. United States, 332 US 575 (1948).

However, it was not until 1970 that the Supreme Court squarely held in Ashe v. Swenson, supra, that the Fifth Amendment guarantee against Double Jeopardy embodies collateral estoppel as a constitutional requirement. In Ashe v. Swenson, supra, three or four men robbed six poker players. Ashe was separately charged with having robbed one of them and was acquitted. He was then tried for robbery of another and was convicted. The Supreme Court held that because the jury found that Ashe was not one of the robbers in the first trial, the State was constitutionally foreclosed from proceeding against him in the second trial. The phrase, "collateral estoppel" was defined by Mr. Justice Stewart:

"Collateral estoppel is an awkward phrase, but it stands for an extremely important principle in our adversary system of justice. It means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot be litigated between the same parties in any future lawsuit." Ashe v. Swenson, Supra, at p. 443. It is noteworthy that although the doctrine has been applied to cases where an issue of ultimate fact

was previously determined favorably to a defendant, the test would appear to be equally applicable uniformly to all cases whether an initial conviction, or an acquittal (as in Ashe v. Swenson, supra) resulted from the initial prosecution. In this regard, the Double Jeopardy Clause does apply equally to a prosecution following a prior conviction as it does to a prosecution following a prior acquittal. See Ex Parte Lange, supra; United States v. Ball, supra at p. 669; State v. Fletcher, 22 Ohio App. 2d 83, 259 N.E. 2d 146, 155 (1970).

It is submitted that the "same transaction" test rather than the "same evidence" test may and should be the law's standard in determining the constitutionality of claimed double jeopardy in multiple prosecutions. The "same transaction" test is thoroughly expounded in Mr. Justice Brennan's concurring opinion in Ashe v. Swenson, supra (joined by Justices Douglas and Marshal). The "same transaction" test should be specifically declared by this Honorable Court to constitute the applicable test where it is claimed that the Double Jeopardy Clause bars a second prosecution for the "same offense." Adoption of this

test will guarantee "that a person shall not be harassed by successive trials; that an accused shall not have to marshal the resources and energies necessary to his defense more than once for the same alleged criminal acts." Abbate v. United States, supra, at 198-9 (Mr. Justice Brennan's concurring opinion). See also Green v. United States, supra at 187.

The "same transaction" test has been described as follows:

"Succinctly stated, the "same transaction" test is that the Double Jeopardy Clause requires the prosecution, except in most limited circumstances, to join at one trial all the charges against a defendant which grow out of a single criminal act, occurrence, episode, or transaction" United States Ex Rel. Brown v. Hendrick, 431 F 2d 436 (6th Cir. 1970) citing Ahse v. Swenson, supra at 453-454. Adoption of this standard would give judicial sanction to the general policy of the United States government that several offenses arising out of the same transaction should not be made the basis of multiple prosecutions in the interests both of fairness to defendants and sound law enforcement. See United States v. Williams,

431 F.2d 1168 (5th Cir. 1970). The "same transaction" test would prohibit a prosecutor from bringing a separate prosecution as to each victim where a single criminal happening involves more than one victim. See State v. Hoag, 356 US 464 (1958). This test would prohibit a single criminal act from producing multiple prosecutions when viewed from the perspective of different laws prohibiting essentially the same conduct. Adoption of the "same transaction" would enforce the Constitutional protection against double jeopardy by providing at least equal protection to criminal defendants as civil defendants from the vexation of multiple proceedings, e.g. See Rules 13, 14, 18, 19, 20, 23 and 24, Federal Rules of Civil Procedure. By requiring joinder of offenses arising from the same transaction in a single trial a practice now encouraged by Rule 8a of the Federal Rules of Criminal Procedure, the Double Jeopardy Clause of the Fifth Amendment could no longer be circumvented by the ingenuity of prosecutors in alleging a multiplicity of offenses arising from a single criminal episode.

When viewed in the light of the foregoing discussion of applicable legal considerations, it is clear that Mr. Wilder's timely claim of double jeopardy in the United States Court for the District of Columbia should have resulted in dismissal of the felony indictment against him. Based upon his plea of guilty to the misdemeanor tried in the District of Columbia Court of General Sessions, that Court determined that he did possess a certain pistol at 5424 Georgia Avenue, N. W. on the 6th day of April, 1970 without being the holder of a valid registration. The evidence which provided the basis of the Court's finding of guilty of the offense of carrying a dangerous weapon on April 6, 1970 makes it abundantly clear that both offenses arose from the same transaction. Both offenses grew out of a "single criminal act, occurrence, episode, or transaction" Ashe v. Swenson, supra at 453-454. The plea of guilty, verdict and sentence at the first trial resulted primarily from Mr. Wilder's arrest following his removal of the pistol from his pocket during an argument with the proprietor of Kanes Tavern (T-T, p.4-6).

The charge upon which Mr. Wilder was tried and punished a second time was based upon the same episode and was virtually identical in substance to that involved in the first trial. The requirement of a "license" rather than "registration" is relatively insignificant, particularly in view of the fact that Police Regulations of the District of Columbia require that one who carries a pistol in the District of Columbia must have in his possession for immediate exhibition upon request, not only a "license" but a "registration certificate." Articles 51, Section 6 and 52, Section 6, Police Regulations of the District of Columbia. Thus, both the "registration certificate" and "license" are constituent elements of a permit (or "license") to carry a pistol.

The Government violated the Double Jeopardy Clause when it elected, with full knowledge of all pertinent facts, to relitigate the same issue of fact, (i.e. whether Mr. Wilder was carrying a pistol without the required permit), against Mr. Wilder in a second trial arising from the same occurrence. In reaching a conclusion that the second trial of Mr. Wilder

violated the Double Jeopardy Clause, this Honorable Court need not decide that both trials involved the "same offense" within the literal terminology of the Fifth Amendment. It is only necessary to decide that Mr. Wilder was placed twice in jeopardy on the basic issue of his participation in a single criminal occurrence. To hold that both crimes charged are triable and punishable separately would elevate form over substance and emphasize what Mr. Justice Rutledge, then Associate Justice of the Court of Appeals for the District of Columbia termed: "refinements * * * so thin that, if they hold, the old and substantial protection against trial or conviction more than once for the same offense is but a shadow of its intended self." District of Columbia v. Buckley, 75 US App. D.C. 301, 128 F. 2d 17, 22 (1943). Constitutional protections must not be determined by the technicalities of pleadings or statutes. This Honorable Court should judicially declare that Mr. Wilder was protected by the Fifth Amendment of the Constitution from being placed again in jeopardy after his conviction in the District

of Columbia Court of General Sessions.

While the primary thrust of this argument is that application of the "same transaction" test leads inevitably to the conclusion that the Double Jeopardy Clause was violated in this case, the same result is reached by liberal and reasonable application of other tests. Thus, for example, the doctrine of collateral estoppel would bar a second trial under the circumstances of this case. Whether Mr. Wilder possessed a pistol on April 6, 1970 was an issue of ultimate fact determined by a valid and final judgment in the first trial. That issue was inherent in the findings of fact made by the Honorable George L. Hart, Jr. in order to find Mr. Wilder guilty at the second trial. Consequently, once having been judicially determined, "that issue cannot be litigated between the same parties in any future lawsuit." Ashe v. Swenson, supra, at 443. Accordingly, even though the first trial involved a plea of guilty to the ultimate issues of fact, the doctrine of collateral estoppel, of constitutional dimensions, precluded the second trial and Mr. Wilder's pre-trial motion to dismiss should have been granted.

Although it is urged that the "same evidence" test announced in Gavieres v. United States, supra, should be rejected, it may be argued that a liberal and reasonable application of that test would permit a determination to be made that the second prosecution was precluded because the evidence required to support a conviction of the second offense, carrying a dangerous weapon without a valid "license" would have been sufficient to warrant a conviction of the lesser offense of possessing a pistol without a valid "registration." In this regard, the Hawaiian Supreme Court recently held that the Federal and State Double Jeopardy Clauses were violated when a defendant was prosecuted for possession of an unregistered firearm, a misdemeanor, and then prosecuted for the same act of possession under a felony statute prohibiting possession of a firearm by one who was previously convicted of a crime of violence. State v. Ahuna, supra. Technical niceties aside, this is in substance the situation presented in Mr. Wilder's case. This Honorable Court should not countenance a second prosecution, conviction and

sentence of Mr. Wilder for substantially the same conduct for which he was previously prosecuted, convicted, and sentenced.

A further and compelling basis for holding that the second prosecution of Mr. Wilder placed him twice in jeopardy for the same offense is the decision of the Supreme Court in Re Nielson, supra. In that case, the defendant was prosecuted and convicted of adultery in violation of a congressional statute after he, a Mormon, had been convicted of violating another congressional statute, applicable to the territory of Utah, which forbade males from cohabiting with more than one woman. Both prosecutions were based on the same acts. Although the second prosecution required proof that the defendant was married to another woman, a fact not essential to the crime of wrongful cohabitation which he was first convicted of, the Supreme Court held that the Double Jeopardy Clause of the Constitution had been violated by the second prosecution, even though it was under a different federal statute protecting a different federal interest.

In this case, it is urged that the second prosecution of Mr. Wilder was precluded by the Fifth Amendment even though as in Re Neilson, supra, the offense of carrying a dangerous weapon may have required proof of facts not necessary in the first prosecution. Not only was the second prosecution based on the same facts as the first prosecution, but the same federal interest was protected by both the registration and licensing requirements of law, each of which is imposed pursuant to an Act of Congress aimed at controlling the possession, sale, transfer and use of pistols and other dangerous weapons in the District of Columbia. 22 D.C. Code 3201 et seq.

For the foregoing reasons, it is concluded that the Double Jeopardy Clause of the Fifth Amendment to the Constitution of the United States precluded the United States from bringing to trial and punishing Mr. Wilder for a violation of the District of Columbia Code in a second criminal prosecution after Mr. Wilder had been convicted and punished, upon his plea of guilty, in an earlier criminal prosecution brought by the District of Columbia for the commission

of a closely related offense arising from the same transaction. Consequently, the Court below erred as a matter of law when it denied Mr. Wilder's pre-trial motion to dismiss the indictment on the grounds that the prosecution of Mr. Wilder for another greater offense arising out of the same transaction would constitute double jeopardy in violation of the Constitution of the United States.

CONCLUSION

In view of the foregoing facts and arguments,
Mr. Wilder respectfully requests this Honorable
Court to reverse the judgment and sentence in the
United States District Court for the District of
Columbia, and to set aside such verdict and sentence
and dismiss the indictment.

Respectfully submitted,

William W. Kramer

William W. Kramer
Counsel for Appellant
(Appointed by this Court)
1111 Massachusetts Avenue, n.W.
Washington, D. C. 20005
483-3200

CERTIFICATE OF SERVICE

I hereby certify that I have personally served
a copy of the foregoing Brief of Appellant on the
Office of the United States Attorney, Appellate
Division, this ____ day of June, 1971.

William W. Kramer
William W. Kramer

BRIEF AND APPENDIX FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 71-1167

UNITED STATES OF AMERICA, Appellee,

v.

JAMES A. WILDER, Appellant.

Appeal from the United States District Court
for the District of Columbia

THOMAS A. FLANNEBY,
United States Attorney.

JOHN A. TERBY,
HERBERT B. HOFFMAN,
C. MADISON BREWER,
Assistant United States Attorneys.

Cr. No. 937-70

United States Court of Appeals
for the District of Columbia Circuit

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INDEX

	Page
Counterstatement of the Case.....	1
The Offense	2
The Pretrial Plea and the Motion to Dismiss the Indictment	2
The Trial	3
Argument	
The trial in this case was barred by neither double jeopardy nor collateral estoppel	3
A. Carrying a pistol without a license is an offense separate and distinct from and unconnected with the failure to register firearms or ammunition.....	4
B. The charge of carrying a pistol without a license was based upon a transaction different from the charge of failing to register the weapon	8
1. Carrying a pistol without a license involves a transaction different from failing to register it, and this Court should not adopt the "same transaction" test	9
2. The doctrine of collateral estoppel is not involved in this case; but even if it were, it would be of no benefit to appellant.....	10
C. The double jeopardy clause is inapplicable to charges brought by different sovereigns.....	12
Conclusion	14
Appendix	15

TABLE OF CASES

* <i>Abbate v. United States</i> , 359 U.S. 187 (1959).....	9, 12
<i>Ashe v. Swenson</i> , 397 U.S. 436 (1970).....	9, 11
<i>Ball v. United States</i> , 349 U.S. 81 (1955).....	4
* <i>Bartkus v. Illinois</i> , 359 U.S. 121 (1959)	12
(Chester) <i>Brown v. United States</i> , D.C. Ct. App. No. 5144, decided June 10, 1970 (unreported).....	6
<i>Cormier v. United States</i> , 137 A.2d 212 (D.C. Mun. Ct. App. 1957)	7
<i>Ex parte Lange</i> , 85 U.S. (18 Wall.) 163 (1873).....	4
<i>Gavieres v. United States</i> , 220 U.S. 338 (1911).....	8, 9
<i>Green v. United States</i> , 355 U.S. 184 (1957).....	3, 9
* <i>Harris v. United States</i> , 131 U.S. App. D.C. 64, 402 F.2d 205 (1968)	11

	Page
<i>Heflin v. United States</i> , 358 U.S. 415 (1959).....	4
<i>Mangum v. United States</i> , D.C. Ct. App. No. 4921, decided October 22, 1969 (unreported).....	6
<i>Martin v. United States</i> , D.C. Ct. App. No. 4312, decided June 6, 1969 (unreported).....	6
<i>McKenzie v. United States</i> , 158 A.2d 912 (D.C. Mun. Ct. App. 1960)	6, 7
<i>Morey v. Commonwealth</i> , 108 Mass. 433 (1871).....	8
<i>Morton v. United States</i> , 87 U.S. App. D.C. 135, 183 F.2d 844 (1950)	6
<i>Newman v. United States</i> , 239 A.2d 152 (D.C. Ct. App. 1968)	7
<i>North Carolina v. Pearce</i> , 395 U.S. 711 (1969).....	8
<i>Prince v. United States</i> , 352 U.S. 322 (1937).....	4
<i>Pulley v. Norvell</i> , 431 F.2d 258 (6th Cir. 1970).....	12
* <i>Randolph v. District of Columbia</i> , 156 A.2d 686 (D.C. Mun. Ct. App. 1959).....	13
<i>Rollerson v. United States</i> , — U.S. App. D.C. —, 449 F.2d 1000 (1971).....	9
<i>United States v. Benz</i> , 282 U.S. 304 (1931).....	4
<i>United States v. Clemons</i> , 142 U.S. App. D.C. 177, 440 F.2d 205 (1970) (<i>en banc</i>).....	7
<i>United States v. Ewell</i> , 383 U.S. 116 (1966).....	8
<i>United States v. Keine</i> , 436 F.2d 850 (10th Cir. 1971).....	11, 13
<i>United States v. Lanza</i> , 260 U.S. 377 (1922).....	12
<i>United States v. Marshall</i> , 142 U.S. App. D.C. 167, 440 F.2d 195 (1970) (<i>en banc</i>).....	7
* <i>United States v. Spencer</i> , — U.S. App. D.C. —, 448 F.2d 1093 (1971)	11, 14
<i>United States v. Synnes</i> , 438 F.2d 764 (8th Cir. 1971).....	13
<i>United States v. Whitaker</i> , 144 U.S. App. D.C. 344, 447 F.2d 314 (1971)	8
<i>United States v. Williams</i> , 431 F.2d 1168 (5th Cir. 1970)...	10
<i>Waller v. Florida</i> , 397 U.S. 387 (1970).....	12, 13, 14
<i>Waterstaat v. United States</i> , 253 A.2d 507 (D.C. Ct. App. 1969)	7
<i>White v. United States</i> , 293 A.2d 21 (D.C. Ct. App. 1971) ..	6
<i>Yick Wo v. Hopkins</i> , 118 U.S. 356 (1886).....	13

OTHER REFERENCES

	Page
1 D.C. Code § 244 (1967).....	4
22 D.C. Code § 3203.....	5, 7
22 D.C. Code § 3204.....	2, 5, 6
22 D.C. Code § 3205.....	4
22 D.C. Code § 3206.....	5
D.C. Reg. No. 68-15, as amended January 6, 1969.....	2, 5, 6, 7
Reorganization Plan No. 3 (1967), 1 D.C. Code Appendix (Supp. IV, 1971).....	4

* Cases chiefly relied upon are marked by asterisks.



ISSUE PRESENTED*

In the opinion of appellee, the following issue is presented:

Does the Double Jeopardy Clause or the doctrine of collateral estoppel preclude the United States from prosecuting one for carrying a pistol without a license after he has pleaded guilty to the District of Columbia charge of failing to register the same pistol?

* This case has not previously been before this Court.



United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 71-1167

UNITED STATES OF AMERICA, *Appellee*,

v.

JAMES A. WILDER, *Appellant*.

Appeal from the United States District Court
for the District of Columbia

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

By a one-count indictment filed June 8, 1970, appellant was charged with carrying a pistol without a license in violation of 22 D.C. Code § 3204. After waiving trial by jury on October 15, 1970, appellant was tried by the Honorable George L. Hart, Jr., and found guilty. On February 12, 1971, appellant was sentenced to one to three years, such sentence to be served consecutively to any sentence previously imposed upon him.¹ This appeal followed.

¹ Appellant was permitted to remain on personal recognizance pending the outcome of this appeal.

The Offense

During the early morning hours of April 6, 1970, while in Kane's Tavern, 5424 Georgia Avenue, Northwest, appellant became engaged in an argument with Mr. Charles Gooding, the proprietor of the establishment. During the course of the disagreement appellant drew from his left front pocket a small pistol and threatened Mr. Gooding. Appellant was thereupon disarmed and arrested by Officer James L. Hardy of the Metropolitan Police Department, who had been inside the premises during the altercation (Tr. II 4-6).² It was ascertained that appellant's weapon was a loaded³ 6.35 millimeter semi-automatic pistol (Tr. II 7-9). Appellant was charged by the United States with carrying a pistol without a license.⁴ In addition, the District of Columbia charged him with having failed to register the firearm and ammunition which were recovered from him.⁵

The Pretrial Plea and the Motion to Dismiss the Indictment

On April 17, 1970, appellant entered a plea of guilty to the District of Columbia charges of failure to register his weapon and ammunition.⁶ He was sentenced to ten days in jail for such violations, but was given credit for such time as he had already spent in custody.

On July 6, 1970, appellant filed a motion to dismiss the indictment in the instant case on the grounds that "the prosecution of the defendant for another greater offense

² For the sake of convenience, references to the trial proceedings of October 15, 1970, will be designated "Tr. II;" references to the pretrial motion proceedings of July 16, 1970, will be designated "Tr. I."

³ Eight live rounds of ammunition were recovered from the weapon itself (Tr. II 9).

⁴ In violation of 22 D.C. Code § 3204.

⁵ In violation of Police Regulation D-197, Article 51, Section One, and Article 53, Section Two [District of Columbia Regulation No. 68-15, as amended January 6, 1969]. See Appendix, *infra*, pp. 23-47.

⁶ That plea was entered before the Honorable Thomas C. Scalley, then presiding as judge of the District of Columbia Division of the District of Columbia Court of General Sessions.

arising out of the same transaction would constitute double jeopardy in violation of the rights secured to the defendant pursuant to the Constitution of the United States." The motion came on for a hearing before the Honorable George L. Hart, Jr., on July 16, 1970, and was denied (see Tr. I).

The Trial

When this case came on for trial on October 15, 1970, appellant waived trial by jury and stipulated to the government's statement of facts (Tr. II 2-3). Officer James L. Hardy recalled that while inside Kane's Tavern, 5424 Georgia Avenue, Northwest, sometime after midnight on April 6, 1970, he had seen appellant in possession of a pistol. He thereupon disarmed and arrested appellant (Tr. II 4-6). He identified the weapon as an operable 6.35 millimeter handgun. The government introduced a certificate showing that as of April 6, 1970, appellant had not been issued a license to carry a pistol (Tr. II 7-8). Appellant did not testify, but after the court found him guilty he acknowledged that on October 6, 1964, he had pleaded guilty to a charge of attempted robbery in the State of New York (Tr. II 11).

ARGUMENT

The trial in this case was barred by neither double jeopardy nor collateral estoppel.

Among its provisions the Fifth Amendment establishes:

[N]or shall any person be subject for the same offense to be twice put in jeopardy of life or limb

The Double Jeopardy Clause expresses the underlying idea that "the State, with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent, he may be found guilty." *Green v. United States*, 355 U.S. 184, 187 (1957). It also guarantees that the government may not impose multiple punishments for the same offense.

Heflin v. United States, 358 U.S. 415 (1959); *Ball v. United States*, 349 U.S. 81 (1955); *Prince v. United States*, 352 U.S. 322 (1937); *United States v. Benz*, 282 U.S. 304 (1931); *Ex parte Lange*, 85 U.S. (18 Wall.) 163 (1873).

Appellant challenges his conviction in this case, renewing here his contention that after his guilty plea to the District of Columbia charge of failure to register his pistol and ammunition, the Double Jeopardy Clause precluded his prosecution by the United States for carrying that same pistol without a license. We disagree.

Appellant advances his challenge from the major premise that he was twice tried for the same offense; that in this case the Government relitigated "the same issue of fact (i.e., whether Mr. Wilder was carrying a pistol without the required permit) against Mr. Wilder in a second trial arising from the same occurrence" (Brief for Appellant at 26). He suggests, for example, that both cases involved "closely related aspects of a single transaction" (Brief for Appellant at 19)⁷ (emphasis added). He suggests that "both the 'registration certificate' [as required by the Police Regulations] and the 'license' [as required by 22 D.C. Code § 3204 and § 3205] are constituent elements of a permit (or 'license') to carry a pistol" (Brief for Appellant at 26). He contends that "Whether Mr. Wilder possessed a pistol on April 6, 1970, was an issue of ultimate fact determined by a valid and final judgment in the first trial," and that the trial in this case involved that same issue (Brief for Appellant at 28). While reflecting semantic niceties, these "first principles" are, we submit, invalid.

A. Carrying a pistol without a license is an offense separate and distinct from and unconnected with the failure to register firearms or ammunition.

Pursuant to its authority,⁸ the District of Columbia City

⁷ Elsewhere he uses the term "same transaction" (Brief for Appellant at 31-32).

⁸ 1 D.C. Code § 224 (1967), as amended by Reorganization Plan No. 3 (1967); see 1 D.C. Code Appendix (Supp. IV, 1971).

Council enacted Regulation No. 68-15. As amended on January 6, 1969, that regulation was intended to control, or at least to record, the trafficking in firearms and ammunition within the District. By its provisions that regulation required persons then possessing or keeping firearms (i.e. rifles and shotguns as well as handguns) within the District to register such weapons within 120 days immediately following the date upon which the regulation became effective.⁹ Other provisions of the regulation require registration of afteracquired firearms.¹⁰ The sale or transfer of ammunition is similarly regulated.¹¹ The provisions of Regulation 68-15 thus apply only to the ownership and transfer of firearms and ammunition.

Congress, intent upon controlling the *carrying of pistols*,¹² enacted in 1932 those provisions now embodied in 22 D.C. Code § 3204, which created a blanket prohibition against the *carrying*¹³ of such weapons in public places without a license, *regardless of ownership* of the weapon.¹⁴

Thus the offenses encompassed by the regulation and by the statute are distinct and different, involving different elements and different societal interests. When appellant pleaded guilty to the District of Columbia charge of failing to register his pistol and ammunition as required by Regulation No. 68-15, he admitted (albeit tacitly) only that as a person possessing or keeping a firearm and ammunition within the District, he had failed to register such items. In short, he admitted ownership of the weapon within the District,¹⁵ and non-registration. Appellant by his

⁹ D.C. Reg. No. 68-15, art. 51, § 2(b).

¹⁰ See, e.g., *id.*, §§ 2(a), 2(c), 2(d).

¹¹ See *id.*, art. 53.

¹² The statute makes no mention of shotguns, rifles, or other firearms.

¹³ We note that Congress at the same time established restrictions upon the ownership and possession of pistols. See 22 D.C. Code § 3203. Those exacting restrictions were also incorporated into D.C. Reg. No. 68-15, art. 52, § 5(c)(9).

¹⁴ Exceptions to that flat prohibition were provided in 22 D.C. Code § 3205. Congress provided for the issuance of licenses to carry pistols in 22 D.C. Code § 3206.

¹⁵ While the regulation does not specifically require residency within the

guilty plea in no way conceded that he had ever carried the weapon, let alone that he had done so on April 6, 1970. Indeed, carrying the pistol was not an issue. Appellant could have been charged with failure to register the weapon no matter where he had the gun. If, for example, the pistol (or for that matter, any firearm similarly unregistered) had been discovered pursuant to a lawful search of appellant's home, car, or place of business, he could have been charged by the District of Columbia under Regulation No. 68-15. Under those circumstances, however, he could not have been charged by the United States with carrying the pistol without a license.¹⁶ It is, for example, well settled that the possession of a pistol in one's home is not a violation of 22 D.C. Code § 3204. *Morton v. United States*, 87 U.S. App. D.C. 135, 183 F.2d 844 (1950); cf. *White v. United States*, 283 A.2d 21 (D.C. Ct. App. 1971).

The elements necessary for appellant's conviction in this case, moreover, offer meaningful contrast to those essential to maintain the District of Columbia charge. In this case the United States had to show that appellant had physically carried the pistol¹⁷ outside of his dwelling or place of

District, it does require that the weapon be possessed or kept within the District. This would require more than momentary control of a firearm by a non-resident of the District, and more than the carrying of such a weapon by one who happened to be passing through the District. The wording of the regulation, while perhaps inadvertent, was apparently designed to encompass those non-District residents who have businesses within the District and keep firearms of any type within their business establishments here.

¹⁶ In an effort to demonstrate that there is a connection between the statute and the District of Columbia regulation, appellant suggests that both a registration certificate and a license are necessary before one may "carry" a pistol (Brief for Appellant at 26). He then apparently concludes that both the regulation and the statute address themselves to the same offense. Appellant's conclusion, however, does not follow from his premise. While one cannot obtain a license to carry a pistol which has not been registered, mere registration does not guarantee a license to carry such a weapon. Conceivably even a registered weapon could be carried in violation of 22 D.C. Code § 3204. See, e.g., *McKenzie v. United States*, 158 A.2d 912 (D.C. Mun. Ct. App. 1960).

¹⁷ The pistol must, of course, be shown to be operable. *Brown v. United States*, D.C. Ct. App. No. 5144, decided June 10, 1970 (unreported); *Mangum v. United States*, D.C. Ct. App. No. 4921, decided October 22, 1969 (unreported); *Martin v. United States*, D.C. Ct. App. No. 4312, decided June 6, 1969 (unreported).

business, or upon other land not possessed by him, and that he had not been issued a license to so carry the weapon.¹⁸ Actual ownership of the pistol was not an issue. Nor is it ever an element of the charge of carrying a pistol without a license. See, e.g., *Newman v. United States*, 239 A.2d 152, 153 (D.C. Ct. App. 1968); *McKenzie v. United States*, *supra* note 16. The United States need only prove knowing or constructive possession of the weapon. *Waterstaat v. United States*, 253 A.2d 507 (D.C. Ct. App. 1969). Needless to say, the evidence necessary to establish ownership of the weapon within the District and failure to register it differs markedly from that needed to prove carrying a pistol without a license.

Moreover, the District of Columbia's police regulation and the statute enacted by Congress protect different societal interests.¹⁹ The obvious purpose of the regulation is to record the ownership and transfer of all types of firearms and ammunition kept within the District.²⁰ The statute, however, guards against only the unlicensed carrying of pistols within the District. While the regulation's registration requirements would be inapplicable to one who is momentarily present within the District with a pistol, the

¹⁸ While appellant's prior conviction had a bearing on the sentence to be imposed, it was not an element of the offense. *United States v. Clemons*, 142 U.S. App. D.C. 177, 440 F.2d 205 (1970) (*en banc*); *United States v. Marshall*, 142 U.S. App. D.C. 167, 440 F.2d 195 (1970) (*en banc*).

¹⁹ The differing societal interests protected by these two provisions are graphically illustrated by the fact that if Officer Hardy had recovered two or more operable pistols from appellant on April 6, 1970, the United States could have charged appellant with only one count of carrying a pistol without a license. See *Cormier v. United States*, 137 A.2d 212 (D.C. Mun. Ct. App. 1957). If, however, it could have been shown that that appellant was the owner of all of such weapons and had failed to register them, each such failing would constitute a separate offense chargeable by the District of Columbia under Regulation No. 68-15.

²⁰ We note, however, that the registration requirement of article 51, section 2(a) of the regulation would inhibit, if not preclude, one who has been previously found to be a drug addict, or someone who has been convicted of a felony or of carrying an unlicensed pistol, from acquiring a pistol from lawful sources. See 22 D.C. Code § 3203. So too might the registration requirements inhibit or preclude the lawful transfer of ammunition to such persons. See D.C. Reg. No. 68-15, art. 53.

statute would clearly prohibit such a person from carrying his pistol upon the streets of the District or elsewhere among the public (absent, of course, a license).

While the provisions of the regulation and of the statute may in some respects complement each other, they are not proven by the same evidence, nor is the requisite proof for one offense sufficient to support the other. Appellant's claim that the Double Jeopardy Clause of the Fifth Amendment precluded his trial in this case is thus without merit. The constitutional provision against double jeopardy is not properly invoked to bar a second prosecution unless the "same offense" is involved in both the first and second trials. *United States v. Ewell*, 383 U.S. 116 (1966); cf. *North Carolina v. Pearce*, 395 U.S. 711, 718 (1969). Here appellant was plainly not twice placed in jeopardy for the same offense.²¹

B. The charge of carrying a pistol without a license was based upon a transaction different from the charge of failing to register the weapon.

Until recently, the Supreme Court's pronouncements in *Gavieres v. United States*,²² by virtue of the "same evidence" rule articulated in that case, would have made short shrift of appellant's challenge to his conviction. The Court there held:²³

A conviction of acquittal upon one indictment is no bar to a subsequent conviction and sentence upon another, unless the evidence required to support a conviction upon one of them would have been sufficient to warrant a conviction upon the other. The test is not

²¹ Appellant apparently takes the position that the failure to register a pistol is a lesser included offense of carrying a pistol without a license (Brief for Appellant at 29). This is plainly not the case. The former offense is "lesser" only in terms of possible punishment. It does not meet the well-established criteria for lesser included offenses. See, e.g., *United States v. Whitaker*, 144 U.S. App. D.C. 344, 447 F.2d 314 (1971).

²² 220 U.S. 338 (1911).

²³ *Id.* at 342, citing *Morey v. Commonwealth*, 108 Mass 433 (1871).

whether the defendant has already been tried for the same act, but whether he has been put in jeopardy for the same offense. A single act may be an offense against two statutes, and if each statute requires proof of an additional fact which the other does not, an acquittal or conviction under either statute does not exempt the defendant from prosecution and punishment under the other.

As this Court recently noted, however, the reliability of the *Gavieres* rule as a binding interpretation of the constitutional provision is in some doubt, and the "same evidence" rule has been the subject of "severe academic and judicial criticism."²⁴ Finding comfort in such articulations of changing legal analysis, appellant advances a two-pronged argument in an effort to place himself within their protective ambit. He first asks this Court to abandon the "same evidence" rule and adopt in its stead the "same transaction" test. He asserts that under that test his prosecution in this case would be precluded by the Double Jeopardy Clause. Second, he argues that even though a double jeopardy defense might in this case be inapplicable, the principle of collateral estoppel would bar his conviction. We respectfully submit that any solace which appellant may find in the dicta of this Court and in the concurring opinions of Justice Brennan is more imagined than real, and that neither of appellant's arguments has merit.

1. Carrying a pistol without a license involves a transaction different from failing to register it, and this Court should not adopt the "same transaction" test.

Appellant's contention that he was twice tried for offenses arising from the same transaction is patently without merit. Certainly the registration of a pistol involves

²⁴ *Rollerson v. United States*, — U.S. App. D.C. —, —, 449 F.2d 1000, 1003 (1971), citing *Green v. United States*, *supra*, and the concurring opinions of Mr. Justice Brennan in *Abbate v. United States*, 359 U.S. 187, 196 (1959), and *Ashe v. Swenson*, 397 U.S. 436, 439 (1970).

a different transaction from obtaining a license to carry such a weapon.²⁸ If the registration of a pistol and the licensing to carry that same pistol involve different transactions, so too do the failure to obtain a registration certificate and the failure to obtain a license to carry the pistol involve separate and distinct omissions. Appellant asserts, "The charge upon which [he] was tried and punished a second time was based upon the same episode and was virtually identical in substance to that involved in the first trial" (Brief for Appellant at 26). Elsewhere, however, he candidly points out that the plea of guilty to the District of Columbia charge "resulted primarily from [his] arrest following his removal of the pistol from his pocket during an argument with the proprietor of Kane's Tavern" (Brief for Appellant at 25). It is certainly true that a single transaction (the drawing of the pistol) led to appellant's arrest by Officer Hardy. It is also true that but for the fact that appellant was seen carrying the pistol, his failure to register it would in all probability have remained undetected. It does not follow, however, that the charges brought by the District of Columbia and by the United States were both based upon the transaction of carrying the weapon. Indeed, quite the contrary is true; the difference between them defeats appellant's argument. *United States v. Williams*, 431 F.2d 1168 (5th Cir. 1970).

2. *The doctrine of collateral estoppel is not involved in this case; but even if it were, it would be of no benefit to appellant.*

The principle of collateral estoppel plays no role in this case. Appellant, without meaningful specificity, suggests

²⁸ Registration of a pistol entails filling out an application for the sale or transfer of such weapon (Metropolitan Police Form PD-219); after approval of such acquisition, a registration form must be filled out (Form PD-217). A copy of the registration form is returned to the owner of the pistol. Licensing, on the other hand, requires filling out an "Application For a License to Carry a Pistol" (Form PD-220); upon approval by the Chief of Police, a license to carry a pistol is itself issued (Form PD-83). For the convenience of the Court we have reproduced copies of these forms in our appendix, *infra*, pp. 15-22.

that his trial in this case was barred, if not by the Double Jeopardy Clause, then by collateral estoppel, in the same manner as benefited the petitioner in *Ashe v. Swenson*.²⁶ He contends that the Supreme Court's admonitions there control this case. We disagree.

Appellant's reading of *Ashe* is, to say the least, selective. The principle of collateral estoppel is inapplicable where the trier of facts in the initial case *could have* "grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration." 397 U.S. at 444. See also *United States v. Spencer*, — U.S. App. D.C. —, 448 F.2d 1093 (1971). Here, however, no fact essential to the proof in this case was settled, let alone settled in appellant's favor, prior to the trial of this case. Nor was any such fact ever in issue. If, for example, appellant had chosen to go to trial on the District of Columbia charges and had been acquitted, the ultimate question thereby resolved would have concerned the actual ownership or keeping of the unregistered weapon and ammunition within the District of Columbia (or the actual registration of the same and an erroneous record check by Officer Hardy and the Police). It is clear that the carrying of the pistol was not an issue regarding the unregistered weapon charge, except insofar as that fact led to the discovery by Officer Hardy that appellant possessed or kept an unregistered pistol within the District of Columbia.²⁷ Cf. *Harris v. United States*, 131 U.S. App. D.C. 64, 402 F.2d 205 (1968).

Moreover, even if appellant were correct in his premise that collateral estoppel is an issue in this case, the protections afforded by that doctrine do not inure to his benefit, in that the initial judicial proceeding resulted in a plea of guilty. *United States v. Keine*, 436 F.2d 850, 854 (10th Cir. 1971). Indeed, the doctrine would seem plainly inap-

²⁶ 397 U.S. 436 (1970).

²⁷ Appellant's argument is grounded upon his premise that the ultimate question resolved by his guilty plea concerned "carrying" the pistol. We again note our disagreement with appellant's terminology.

plicable to a situation involving a guilty plea. *Pulley v. Norvell*, 431 F.2d 258 (6th Cir. 1970).

C. The double jeopardy clause is inapplicable to charges brought by different sovereigns.

It has long been axiomatic that the defense of double jeopardy is unavailable to someone successively tried by different sovereigns, even though such trials are based upon the same evidence, or arise as a result of the same transaction. *Abbate v. United States*, 359 U.S. 187 (1959); *Bartkus v. Illinois*, 359 U.S. 121 (1959); *United States v. Lanza*, 260 U.S. 377 (1922). The reasoning behind that principle is two-fold. First, where *different parties* each charge a defendant, distinguishably different offenses are involved, with different parties and interests being protected. Thus, where the United States prosecutes one for the robbery of a federal banking institution, and for the same transaction the state subsequently prosecutes the same person for robbery, different offenses are involved, and the Double Jeopardy Clause affords the defendant no protection. *Bartkus v. Illinois*, *supra*. Secondly, it would work a hardship and impair effective law enforcement to hold otherwise. As the Supreme Court noted in *Abbate*:²⁸

Thus, unless the federal authorities could somehow insure that there would be no state prosecutions for particular acts that also constitute federal offenses, the efficiency of federal law enforcement must suffer if the Double Jeopardy Clause prevents successive state and federal prosecutions.

Appellant does not dispute the wisdom of dual sovereignty, and acknowledges that the law in this jurisdiction recognizes the duality of authority of the United States and the District of Columbia. Relying upon *Waller v. Florida*,²⁹ however, appellant suggests that the Double Jeopardy Clause now reaches even those prosecutions

²⁸ 359 U.S. at 195.

²⁹ 397 U.S. 387 (1970).

brought by dual sovereigns (Brief for Appellant at 15-16). We think that appellant reads *Waller* too broadly.

In *Waller*, the petitioner stole a mural from the St. Petersburg City Hall. He was first charged by the City with destruction of city property and with disorderly breach of the peace. On the basis of the same conduct he was thereafter charged by the State for grand larceny. The State supreme court upheld his convictions on the ground that he had been prosecuted by different sovereigns. The Supreme Court reversed, because Florida law specifically established the unity of authority between the State and its municipalities.³⁰ As Chief Justice Burger noted, by law, the city and State were both arms of the same sovereignty. 397 U.S. at 392-393. *Waller* thus concerns the "very narrow question" of successive charges for the same transaction, brought by the identical sovereign. *United States v. Keine, supra*, 436 F.2d at 854. In the absence of such identity of sovereigns, the Double Jeopardy Clause is inapplicable, *Waller* notwithstanding. *United States v. Synnes*, 438 F.2d 764 (8th Cir. 1971). In short, *Waller* has neither eliminated nor undermined the dual sovereignty exception to the Double Jeopardy Clause.

As appellant acknowledges, the law in this jurisdiction recognizes the distinction in sovereignty between charges brought by the United States and those initiated by the District of Columbia itself. *Randolph v. District of Columbia*, 156 A.2d 686 (D.C. Mun. Ct. 1959). In that case, the defendant was first acquitted of negligent homicide as charged by the United States and in a later trial he was convicted for violating a District of Columbia traffic offense. As the court there noted, "[the offenses] are against different sovereigns." *Id.* at 688. Title 23 of the District of Columbia Code, Section 101, distinguishes between those instances where one accused of wrongdoing will be charged by the United States, and when he will be charged by the

³⁰ The wisdom of the Florida Supreme Court in this case was suspect even absent such specific legislation. Municipalities have long been held to be if not subdivisions of the State, at least subordinate to the State. *Fick Wo v. Hopkins*, 118 U.S. 356 (1886).

District of Columbia. The distinctions established therein demonstrate, we think, the dual sovereignty involved in this case.

If this Court were to accept appellant's position that such distinctions have been invalidated by reason of *Waller v. Florida*, the United States would be forced to coordinate the prosecution of each and every person charged with a firearms violation,²¹ in order to assure that the accused not be tried twice. In each and every such instance, one of the charging authorities would have to forego further proceedings. Under such a system, the efficiency of law enforcement would certainly suffer. We think that this Court rejected such consequences when it ruled that the prior acquittal of one on traffic charges by the District of Columbia did not bar a later charge brought by the United States for assaulting the arresting police officer. *United States v. Spencer, supra.*

CONCLUSION

WHEREFORE, appellee respectfully submits that the judgment of the District Court should be affirmed.

THOMAS A. FLANNERY,
United States Attorney.

JOHN A. TERRY,
HERBERT B. HOFFMAN,
C. MADISON BREWER,
Assistant United States Attorneys.

²¹ For that matter, this coordination of prosecutions would have to exist in each and every plea of criminal justice where District of Columbia charges happen to coexist along with potential United States charges.



APPENDIX



**GOVERNMENT OF THE DISTRICT OF COLUMBIA
METROPOLITAN POLICE DEPARTMENT
APPLICATION FOR A LICENSE TO CARRY A PISTOL**

PRINT OR TYPE ALL ENTRIES ON THIS APPLICATION

1. APPLICANT'S FULL NAME		2. ALIAS OR NICK NAME KNOWN BY			
3. IDENTIFYING SCARS, MARKS OR PHYSICAL DEFECTS		4. DATE OF BIRTH		5. PLACE OF BIRTH	
6. PRESENT ADDRESS (Street Name, Street and Apt. No.)		7. G.S.C.	8. HEIGHT	9. WEIGHT	10. HAIR & EYES
11. CITY	STATE	ZIP CODE	12. OPERATOR'S PERMIT NO. & ST.		
13. BUSINESS PHONE NO.		14. HOME PHONE	15. NUMBER OF YEARS LIVED AT PRESENT ADDRESS		16. IF LESS THAN 3 yrs, AT PRESENT ADDRESS _____ yrs. COMPLETE # 17
17. ADDRESS RESIDED AT FOR 3 YEARS IMMEDIATELY PRIOR TO APPLICATION					
18. PRESENT BUSINESS OR OCCUPATION AND ADDRESS				19. HOW LONG? YRS.	
20. IF ANSWER TO ITEM 18 IS LESS THAN 3 YEARS GIVE BUSINESS OR OCCUPATION AND ADDRESS FOR THE IMMEDIATE PRIOR 3 YEAR PERIOD					
21. HAVE YOU EVER BEEN ISSUED ANY PISTOL, RIFLE OR SHOTGUN LICENSE, REGISTRATION CERTIFICATE OR PERMIT BY THE FEDERAL GOV. STATE GOV. OR GOVERNMENT THEREOF INCLUDING THE DISTRICT OF COLUMBIA? <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES OF FEDERAL GOVERNMENT BY NAME AGAINST _____					
22. LIST TYPE AND NUMBER OF ANY FOREIGN LICENSE, REGISTRATION OR PERMIT AND INFORMATION OF SOURCE THAT YOU MAY HAVE.					
23. HAVE YOU EVER BEEN INVOLVED IN ANY MISDEMAP (INVOLVING A PISTOL, RIFLE OR SHOTGUN)? <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES OF FEDERAL GOVERNMENT <small>(include date, place and the source of any permit issued or denied.) Allow space here if more space is needed</small>					
24. GIVE TWO CHARACTER REFERENCES (Full Name, Address, Phone number and Occupation) NOT RELATIVES AND WHO HAVE KNOWN YOU AT LEAST 5 YEARS. 1. _____ 2. _____					
25. DESCRIPTION OF WEAPON TO BE CARRIED					
WEAPON	CALIBER	SERIAL NUMBER	D.C. REGISTRATION NUMBER		

I certify that I am not ineligible to carry a pistol under the terms stated on the reverse side of this application and that I have attached to this application a statement of my need to carry a pistol plus two black and white photos (size 13/4 by 17/8 inches) taken within 30 days and that the Metropolitan Police Department has in its files my fingerprints which were taken

for the purpose of: _____

will be permitted to take my fingerprints at the time this application is submitted.

DATE OF APPLICATION

SIGNATURE OF APPLICANT



**GOVERNMENT OF THE DISTRICT OF COLUMBIA
METROPOLITAN POLICE DEPARTMENT
APPLICATION FOR A LICENSE TO CARRY A PISTOL**

PRINT OR TYPE ALL ENTRIES ON THIS APPLICATION

1. APPLICANT'S FULL NAME		2. ALIAS OR NICK NAMES KNOWN BY													
3. IDENTIFYING SCARS, MARKS OR PHYSICAL DEFECTS		4. DATE OF BIRTH													
5. PRESENT ADDRESS (Street No., Room and Apt. No.)		7. SEX	8. HEIGHT												
9. CITY	STATE	ZIP CODE	10. WEIGHT												
11. BUSINESS PHONE NO.		12. HOME PHONE													
		13. NUMBER OF YEARS LIVED IN PRESENT ADDRESS													
		14. OPERATOR'S PERMIT NO. G-07.													
		15. SOCIAL SECURITY NO.													
		16. UP LONGER THAN 5 yrs. YES _____ NO _____													
17. ADDRESS HELD AT FOR 5 YEARS IMMEDIATELY PRIOR TO APPLICATION															
18. PRESENT BUSINESS OR OCCUPATION AND ADDRESS		19. HOW LONG? YES _____ NO _____													
20. IF ANSWER TO ITEM 18 IS LESS THAN 5 YEARS GIVE BUSINESS OR OCCUPATION AND ADDRESS FOR THE IMMEDIATE PRIOR 5 YEAR PERIOD															
21. HAVE YOU EVER BEEN DENIED ANY PISTOL, RIFLE OR SHOTGUN LICENSE, REGISTRATION CERTIFICATE OR PERMIT BY THE FEDERAL GOV. STATE GOV. OR SUBDIVISIONS THEREOF INCLUDING THE DISTRICT OF COLUMBIA? <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES (If yes explain why by hand) _____															
22. LIST TYPE AND NUMBER OF ANY FIREARM LICENSES HELD (TYPE YOUR NAME AND JURISDICTION OF ISSUANCE. THAT YOU MAY HAVE HAD)															
23. HAVE YOU EVER BEEN INVOLVED IN ANY DISPUTE (INVOLVING A PISTOL, RIFLE OR SHOTGUN)? (Include date, place and the names of any persons injured or killed.) (Answer requires more space if more space is needed) <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES (If yes explain circumstances)															
24. GIVE TWO CHARACTER REFERENCES (Full Name, Address, Phone number and Company) NOT RELATIVES AND WHO HAVE KNOWN YOU AT LEAST 5 YEARS.															
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="4" style="text-align: center;">DESCRIPTION OF WEAPON TO BE CARRIED</th> </tr> <tr> <th>NAME OF WEAPON</th> <th>CALIBER</th> <th>SERIAL NUMBER</th> <th>D.C. REGISTRATION NUMBER</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>				DESCRIPTION OF WEAPON TO BE CARRIED				NAME OF WEAPON	CALIBER	SERIAL NUMBER	D.C. REGISTRATION NUMBER				
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NAME OF WEAPON	CALIBER	SERIAL NUMBER	D.C. REGISTRATION NUMBER												

I certify that I am not ineligible to carry a pistol under the terms stated on the reverse side of this application and that I have attached to this application a statement of my need to carry a pistol plus two black and white photos (size 1 3/4 by 1 7/8 inches) taken within 30 days and that the Metropolitan Police Department has in its files my fingerprints which were taken

for the purpose of: _____

will be permitted to take my fingerprints at the time this application is submitted.

DATE OF APPLICATION

SIGNATURE OF APPLICANT

The following is an abridgement of Police Regulations and the D.C. Code which prohibit the sale, possession or ownership of pistols within the District.

1. Persons whose possession of a pistol in the District of Columbia is prohibited by law:
 - a. Those previously convicted in the District of Columbia or elsewhere of a **MURDER**.
 - b. Those who are drug addicts (22-3208 D.C. Code).
 - c. Those previously convicted in the District of Columbia of:
 - (1) Inviting for prostitution
 - (2) Keeping a bawdy house, or
 - (3) Vagrancy
 - d. Those who, not being licensed as Deadly Weapons Dealers, have been convicted of a violation of the Act of Congress to control Possession, Sale, Transfer and Use of Pistols, etc. (22-3203, D.C. Code).
 - e. Those known or reasonably believed to be not of sound mind.
 - f. Except as between parent and child or guardian and ward those under the age of 21 years.
 - g. Those who have been convicted in any jurisdiction of a crime punishable by imprisonment for more than ONE YEAR, or is under indictment or facing prosecution for such a crime.
 - h. Those who have been convicted in any jurisdiction of any of the following offenses punishable by imprisonment for LESS than ONE YEAR:
 - (1) any offense involving a physical assault
 - (2) any offense committed while carrying a firearm or weapon
 - (3) using, possessing or selling any narcotic or dangerous drugs
 - (4) any violation of a law restricting the sale, receipt, possession, use or transportation of a firearm or destructive device
 - i. Those who suffer from a **PHYSICAL DEFECT** which would make it unsafe for him to use a pistol.
 - j. Those to whom the sale of any pistol would NOT BE in the interest of the public health, safety, or welfare.
 - k. Those who have been involved in a firearms mishap causing death or injury to another human being.
 - l. Those who have been adjudicated chronic alcoholics by any court.
2. The Chief of Police MAY issue to the applicant a numbered license to carry a pistol if the Chief:
 - (1) determines, after investigation, that the applicant does not answer to any of the above conditions, (para 1).
 - (2) is satisfied that the applicant is a person of good moral character and is a responsible person in the light of his age, reputation, employment, medical history, experience with pistols and has a need to carry such pistol to protect his person and property. A general statement of fear for safety of person or property will not be accepted, justification for this requirement must be specific.
3. The Chief of Police SHALL DENY a license to carry a pistol to any applicant, because he is not a suitable person to be so licensed under Section 6 of the Act (D.C. Code, 22-3208), if the Chief determines after investigation or test; that the applicant:
 - (1) does answer to one or more of the above conditions, (para 1).
 - (2) has failed to demonstrate satisfactorily a knowledge of the laws of the District of Columbia pertaining to pistols, and the safe responsible use of the same in accordance with tests and standards prescribed by the Chief of Police; or
 - (3) has vision less than that required to obtain a valid driver's license under the laws of the District.

17

NO. _____ DATE OF ISSUE _____

NAME _____ **AGE** _____

ADDRESS _____

PHYSICAL MARKS, TATTOOS, SCARS, GLASSES, ETC.: _____

THE ABOVE SUBJECT IS HEREBY AUTHORIZED BY THE METROPOLITAN POLICE DEPARTMENT OF THE DISTRICT OF COLUMBIA TO CARRY A PISTOL IN THE DISTRICT OF COLUMBIA FOR A PERIOD OF ONE YEAR FROM THE ABOVE DATE OF ISSUE. 

5

(MAKE)

(SAL)

(SERIAL NO.)

CHIEF OF POLICE

E. B. 43

(SEE REVERSE SIDE)

PHOTO

卷之三

R. FOREFINGER PRINT

I HAVE BEEN FAMILIARIZED WITH THE FIREARM REGULATIONS OF THE DISTRICT OF COLUMBIA AND WILL CONSIDER THIS LICENSE RE-SCINDED WITHOUT FURTHER NOTICE IF I FAIL TO COMPLY.

{SIGNATURE}

Form PD-610
Rev. 4/60

GOVERNMENT OF THE DISTRICT OF COLUMBIA
METROPOLITAN POLICE DEPARTMENT

APPLICATION FOR SALE OR TRANSFER OF A PISTOL
NO FEE REQUIRED WITH THIS APPLICATION—PRINT ALL INFORMATION

This application for sale or transfer of a pistol must be forwarded to the Metropolitan Police Department, Gun Control Section, 300 Indiana Ave., N.W., Washington, D.C. 20001, by the seller.
The purchaser must be fingerprinted by the Metropolitan Police Department or have been fingerprinted by this Police Department within the previous 3 years and have mandatory identification.
No transfer of a pistol between the seller and the purchaser may be made until a reply from the Chief of Police has been received by both parties involved.

Complete Mailing Address

Seller's Name	Purchaser's Name		
1. Street Address	Apt. No.	4. Present Street Address	Apt. No.
2. City	State	5. City	State
3. Zip Code		6. Zip Code	
Dealer License No.			
New <input type="checkbox"/>	Description of Pistol	Used <input type="checkbox"/>	Purchaser's Description
7. Make of weapon	8. Model	10. Date of Birth	11. Place of Birth
9. Serial No.	10. Mfg. I.D. No.	12. Sex	13. Race
11. Caliber No. of shot	12. Barrel Length	13. Finish	14. Operator's Permit No.
14. Type of Action	15. Social Security No.		
16. Identifying Marks	17. Name Phone	18. Business Phone	19. Occupation
20. PURCHASER'S ADDRESSES FOR PAST FIVE (5) YEARS WITH DATES OF RESIDENCE.			
21. PURCHASER'S OCCUPATION, BUSINESS NAME AND ADDRESSES FOR PAST FIVE (5) YEARS WITH DATES OF EMPLOYMENT.			
22. HAVE YOU PREVIOUSLY BEEN DENIED IN THE DISTRICT OF COLUMBIA OR ELSEWHERE ANY PISTOL, RIFLE, SHOTGUN LICENSE OR REGISTRATION CERTIFICATE? NO YES (If "yes" Explain why? By whom?) (Attach separate sheet if needed.)			
23. HAVE YOU EVER BEEN INVOLVED IN ANY MISDEMEANOR INVOLVING A PISTOL, RIFLE OR SHOTGUN NO YES (If YES explain circumstances, include Date, Place and Names of any person injured or killed. (Attach separate sheet if needed.)			
24. GIVE A BRIEF STATEMENT OF YOUR NEED TO PURCHASE AND POSSESS A PISTOL (If more space is needed attach separate sheet.)			
25. I HEREBY CERTIFY THAT I AM NOT FORBIDDEN BY EXISTING LAWS AND REGULATIONS AS OUTLINED ON THE REVERSE HEREOF, TO PURCHASE, OR POSSESS A PISTOL.			

Signature of Seller

(date)

Signature of Purchaser

(date)

NOTE: Seller and Purchaser must sign in the presence of each other. This is not a registration for the above listed weapon. Upon approval of this transaction, a separate application for registration must be filed with the Chief of Police.

The following is an abridgement of Police Regulations and the D.C. Code which prohibit the sale, possession or ownership of pistols within the District.

1. Persons whose possession of a pistol in the District of Columbia is prohibited by law:
 - a. Those previously convicted in the District of Columbia or elsewhere of a **FELONY**.
 - b. Those who are drug addicts (23-3303 D.C. Code).
 - c. Those previously convicted in the District of Columbia of:
 - (1) Inviting for prostitution
 - (2) Keeping a bawdy house, or
 - (3) Vagrancy
 - d. Those who, not being licensed as Deadly Weapons Dealers, have been convicted of a violation of the Act of Congress to control Possession, Sale, Transfer and Use of Pistols, etc. (23-3303, D.C. Code).
 - e. Those known or reasonably believed to be not of sound mind.
2. Except as between parent and child or guardian and ward those under the age of 21 years.
3. Those who have been convicted in any jurisdiction of a crime punishable by imprisonment for more than **ONE YEAR**, or is under indictment or fleeing prosecution for such a crime.
4. Those who have been convicted in any jurisdiction of any of the following offenses punishable by imprisonment ~~for~~ LESS than **ONE YEAR**:
 - (1) any offense involving a physical assault
 - (2) any offense committed while carrying a firearm or weapon
 - (3) using, possessing or selling any narcotic or dangerous drugs
 - (4) any violation of a law restricting the sale, receipt, possession, use or transportation of a firearm or destructive device
5. Those who suffer from a **PHYSICAL DEFECT** which would make it unsafe for him to use a pistol.
6. Those to whom the sale of any pistol would NOT BE in the interest of the public health, safety or welfare.
7. Those who have been involved in a firearms mishap causing death or injury to another human being.
8. Those who have been adjudicated chronic alcoholics by any court.

Read This Side Before Answering Any Item.

INSTRUCTIONS FOR COMPLETING FIREARMS REGISTRATION APPLICATION

You may NOT Register a Firearm for another person.

ALL ENTRIES MUST BE PRINTED USING CAPITAL LETTERS. USE BLACK INK, BLACK BALL POINT PEN OR PENCIL.
Complete One Set of Registration forms for each firearm. The original and a non-refundable \$2.00 fee must accompany each Registration Application. Checks must be made payable to D.C. Treasurer.

ITEM NUMBERS CORRESPOND TO ENTRIES ON FACE OF APPLICATION.

ITEMS 1 through 11—Personal Identification of Registrant. Print all entries in CAPITAL LETTERS.

1. Last name, first name, middle name in full.
2. Date of Birth—Use numbers to indicate Month/Day/Year in that order.
3. Indicate the city and state where you were born. (If foreign born list city and country.)
4. Check appropriate Box "M" Male, "F" Female.
5. Occupation—Full time vocation.
6. Your Residential address; include Zip Code.
7. Your business address.
8. Operator Permit Number. If you do not possess a valid D.C. Operators Permit, enter the state & operator permit or license number of your resident state. If you do not possess a valid operators license, enter "None".
9. Social Security Number.
10. Home Phone No.—Give your present resident home phone.
11. Business Phone No.—Give the phone No. at which you may be reached during business hours.

ITEMS 12 through 19—Description of Firearms.

12. Make of Weapon—As best can be determined.
13. Serial Number—As imprinted at time of manufacture. Firearms not having serial numbers, write none; the name or country of manufacturer and complete Items 16 & 17.
14. Model of Weapon—Either manufacturer's number or name of model, if none available write "None" and complete Items 16 & 17.
15. Manufacturer's Identification Number.
16. Type of Weapon—Select the classification that most accurately describes the firearm. For Rifle/Shotgun combinations—check both rifle and shotgun box.
17. Caliber/Gauge of firearm. Combination weapons enter caliber first, gauge second. Indicate caliber by Cal. and Gauge by GA.
18. Describer Weapon—Type of Action, e.g. double action, semiautomatic; lever; bolt; pump; etc. The number of barrels written out e.g.—one-two; If more than one, the placement of barrels e.g. side-side, over/under. The length of barrel—where firing chamber is detached from barrel, as in revolver, measure barrel only. Where chamber is a part of barrel, as in rifles measure from breech to end of barrel. Indicate barrel length in inches, followed by "in." Known number of shots when fully loaded and method of weapon feed, e.g.—clip (6 shots); magazine—(9 shots); single shot, etc.
19. Enter Identifying Marks of weapon such as engraving; initials engraved or inscribed; unique marks to your personal weapon.

Registered Owner MUST

1. Notify Chief of Police in Writing within 48 hours of:
 - (a) Discovery of loss; theft, or destruction of registration certificate
 - (b) Any change of name or address as recorded on certificate
 - (c) Sale, Transfer or other disposition of any registered firearm, unless registered firearm is leased in accordance with existing regulations.
2. Registration certificate must be returned to Police Department within 48 hrs. when Registered Firearms are:

(a) Lost;	(d) Sold;
(b) Stolen;	(e) Transferred;
(c) Destroyed;	(f) Otherwise disposed of.

LC-1

PRINT ALL INFORMATION

1. PRINT NAME (LAST) <input type="text"/> (FIRST) <input type="text"/> (MIDDLE) <input type="text"/>		12. SERIAL NUMBER <input type="text"/>	13. MFR. ID. NUMBER <input type="text"/>
2. DATE OF BIRTH <input type="text"/> / <input type="text"/> / <input type="text"/> YR.		14. WEAPON MAKE <input type="text"/>	15. WEAPON MODEL <input type="text"/>
4. SEX <input type="checkbox"/> M <input type="checkbox"/> F	6. OCCUPATION <input type="text"/>		
8. RESIDENT ADDRESS <input type="text"/>		16. TYPE OF WEAPON COMBINATION <input type="checkbox"/> PISTOL <input type="checkbox"/> SHOT GUN <input type="checkbox"/> RIFLE <input type="checkbox"/>	
7. BUSINESS ADDRESS <input type="text"/>		18. DISCHARGE WEAPON (Type of Action, No. of Barrels, length of barrel, No. of shots when loaded, etc.) REV. <input type="checkbox"/> AUTO <input type="checkbox"/> BREACH LOADING <input type="checkbox"/> SLIDE <input type="checkbox"/> BOLT <input type="checkbox"/> LEVER <input type="checkbox"/> OTHER <input type="checkbox"/> LENGTH OF BARREL FINISH MAXIMUM NO. SHOTS NO. OF BARRELS	
9. OPERATOR'S PERMIT <input type="text"/>	10. SOCIAL SECURITY NO. <input type="text"/>	19. IDENTIFYING MARKS ON THE WEAPON (Describe) <input type="text"/>	
11. HOME PHONE NO. <input type="text"/>	12. BUSINESS PHONE NO. <input type="text"/>	PURCHASED NEW <input type="checkbox"/> USED <input type="checkbox"/> DATE <input type="text"/> DEALER'S LIC. NO. <input type="text"/>	
21. NAME AND ADDRESS OF DEALER/INDIVIDUAL THE WEAPON WAS ACQUIRED FROM. <input type="text"/>			

FEES REQUIRED Read Instructions on Reverse Side before Filling in this Application.

Definition of Pistol, Rifle, Shotgun

- (a) "Pistol" means any pistol, rifle or shotgun which will or is designed to, or may readily be converted to, expel a projectile by the action of an explosive; or the frame or receiver of any such pistol, rifle, or shotgun; but does not include a firearm which is not designed or redesigned to use rim fire or center fire fixed ammunition or manufactured in or before 1899.
- (b) "Rifle" means any firearm with a barrel less than twelve inches in length.
- (c) "Rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire a single projectile through the rifled bore for each single pull of the trigger.
- (d) "Shotgun" means any shotgun designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

Each person within the District, who acquires possession or control of a pistol, rifle, or shotgun must submit an application for a registration certificate within 48 hours of acquisition or control. Registration certificate MUST accompany firearms and be exhibited upon demand of a law enforcement officer.

DO NOT WRITE IN THIS SPACE

Date registered	REGISTRATION NO.
<input type="text"/>	<input type="text"/>

Date registration submitted

Signature of Registrant

FBI-BP
Rev. 1-66

GOVERNMENT OF THE DISTRICT OF COLUMBIA
METROPOLITAN POLICE DEPARTMENT
GUN REGISTRATION CERTIFICATE

DO NOT DETACH

This portion is used for RETURN mailing. Please print your name and complete mailing address below. Include your Apt. number if applicable.

(NAME)

(ADDRESS) (APT. NO.)

(CITY) (STATE) (ZIP)

RECORD YOUR REGISTRATION NUMBER BELOW

KEEP THIS PORTION OF YOUR REGISTRATION IN A SAFE PLACE

Firearms owners **MUST** notify the Chief of Police in writing within 48 hours of:

1. Discovery of loss, theft or destruction of Registration Certificate
2. Any change of name or address from that which is recorded on the Registration Certificate

**INCLUDE YOUR REGISTRATION NUMBER IN ALL CORRESPONDENCE TO
THE POLICE DEPARTMENT CONCERNING GUNS**

CUT HERE

Registration Certificate must be returned to the Chief of Police within 48 hours when the firearm is; LOST STOLEN
 DESTROYED SOLD TRANSFERRED
 OTHERWISE DISPOSED OF (check applicable box). If sold or transferred give name and address and date of transaction. If lost, stolen, destroyed or otherwise disposed of, explain in full and give date.

If Shotgun or Rifle give new owner's lic. no.

REGULATION NO. 68-15

AS AMENDED JANUARY 6, 1969

ARTICLE 50. DEFINITIONS

SEC. 1. When used in these Regulations (Article 50 through 55 of the Police Regulations of the District of Columbia), unless the context requires otherwise, the terms "pistol," "sawed-off shotgun," "machine gun," "person," and "sell" and "purchase" shall have the meanings ascribed to them in the Act of Congress entitled "An act to control the possession, sale, transfer and use of pistols and other dangerous weapons in the District of Columbia," as amended, approved July 8, 1932 (47 Stat. 650, D. C. Code, sec. 22-3201 *et seq.*). Other terms used in these Regulations, unless the context otherwise requires, shall have the meanings ascribed to them as follows:

- (a) "Commissioner" means the Commissioner of the District of Columbia or his designated agent.
- (b) "Chief of Police" and "Chief" mean the Chief of Police of the Metropolitan Police Department of the District of Columbia or his designated agent.
- (c) "District" means the District of Columbia.
- (d) "Firearm" means any pistol, rifle or shotgun which will or is designed to, or may readily be converted to, expel a projectile by the action of an explosive; or the frame or receiver of any such pistol, rifle, or shotgun; but does not include a firearm that is not designed or redesigned to use rim fire or center fire fixed ammunition or manufactured in or before 1898.
- (e) "Rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire a single projectile through a rifle bore for each single pull of the trigger.
- (f) "Short-barreled rifle" means a rifle having one or more barrels less than sixteen inches in length and a

weapon made from a rifle, whether by alteration, modification, or otherwise, if such weapon as modified has an overall length of less than twenty-six inches.

(g) "Shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(h) "Ammunition" means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm, machine gun, short-barrel rifle or sawed-off shotgun.

(i) The term "destructive device" means any firearm, weapon or automatic weapon which is not a pistol, rifle, shotgun, sawed-off shotgun or machine gun defined herein and includes any explosive not commonly used for lawful commercial purposes, explosive bomb, poison gas bomb, tear gas or tear gas bomb, grenade, mine, rocket, missile, or similar device; and includes any type of weapon which will, or is designed to or may readily be converted to expel a projectile by the action of any explosive and having any barrel with a bore of one-half inch or more in diameter; excluding however,

(1) a pneumatic gun, spring gun, or B-B gun which expels a single globular projectile not exceeding .18 inch in diameter;

(2) any device used exclusively for the firing of stud cartridges, explosive rivets, or similar industrial ammunition; or

(3) any device used exclusively for signalling or safety, and required or recommended by the United States Coast Guard or the Interstate Commerce Commission.

(j) "Dealer" means (i) any person engaged in the business of selling firearms or ammunition, (ii) any person engaged in the business of manufacturing or repairing firearms or of making or fitting special barrels, stocks or trigger mechanisms to firearms, or (iii) any person whose business or occupation includes the taking or receiving, by

way of pledge or pawn, of any firearm or ammunition as security for the payment or repayment of money. The term "licensed dealer" means any dealer licensed under the provisions of these Regulations.

(k) "Manufacturing" means manufacturing, producing, making or remaking any firearm, destructive device or ammunition for sale or distribution."

(l) "Act" means the Act of Congress, entitled "An Act to control the possession, sale, transfer and use of pistols and other dangerous weapons, in the District of Columbia, as amended, approved July 8, 1932 (47 Stat. 650, D. C. Code, sec. 22-3201 *et seq.*).

(m) The term "these Regulations" means the regulations and provisions contained in Articles 50 through 55 of the Police Regulations of the District of Columbia as adopted by the District of Columbia Council and any orders issued by the Commissioner pursuant to authority transferred to him by the Council in such Articles.

(n) "Carry" means to carry, transport or possess on or about one's person, or in such close proximity to one's person as to be easily and readily accessible.

ARTICLE 51. REQUIRING THE REGISTRATION OF FIREARMS IN THE DISTRICT OF COLUMBIA

SEC. 1. Except as herein provided, no person shall within the District, possess, or keep under his control, or sell or otherwise dispose of any pistol, or rifle or shotgun unless such person is the holder of a valid registration certificate for such pistol, rifle or shotgun.

SEC. 2(a). Each licensed dealer who sells a pistol, rifle or shotgun to a person in whose possession the pistol, rifle or shotgun must be registered shall require from purchaser a completed application for the registration of the pistol, rifle or shotgun and shall file the application with the Chief of Police at the time of sale.

(b) Each person who within the District possesses, or keeps under his control any pistol, rifle or shotgun purchased or acquired prior to the effective date of these

Regulations, shall make an application to register such pistol, rifle or shotgun within 120 days immediately following the effective date of these Regulations.

(c) Each person who brings into the District any pistol, rifle or shotgun acquired outside of the District, or who causes a rifle or shotgun to be lawfully delivered to him within the District, shall make an application to register such pistol, rifle or shotgun within forty-eight hours after he brings such pistol, rifle or shotgun into the District or within forty-eight hours after such rifle or shotgun is delivered to him in the District.

(d) Each person within the District who otherwise acquires possession or control of any pistol, rifle or shotgun shall make an application to register such pistol, rifle or shotgun within forty-eight hours after he acquires possession or control of the same; except as provided in Art. 55, sec. 6 of these Regulations.

(e) The executor or administrator of an estate containing a registered firearm shall promptly notify the Chief of Police of the death of the registered owner, and at the time of any transfer of the firearm, shall return the registration certificate for the firearm to the Chief. The executor or administrator of an estate containing an unregistered firearm shall make an application to transfer such firearm within thirty days of his appointment or qualification.

SEC. 3(a). Each application required by this Article shall contain when filed with the Chief of Police the following information:

(1) "The name, occupation, residence and business address, and date of birth of the applicant. Where the applicant is not a natural person, this information shall refer to principal officer of the applicant, and shall contain in addition the name and address of the applicant."

(2) "The make, caliber, or gauge, manufacturer's identification number, serial number and other identifying marks of the pistol, rifle or shotgun; and

(3) "The name and address of the person from whom

'the firearm was acquired, and the date and place of acquisition."

(b) Each application to register a pistol, rifle or shotgun shall be made in duplicate on forms provided by the Chief of Police and be signed by the applicant. The original shall be filed with the Chief of Police, and the duplicate shall be retained by the applicant as temporary evidence of registration. The Chief of Police, after receipt of a duly filed application, shall send to the applicant a numbered registration certificate identifying the applicant as the registered owner of the pistol, rifle or shotgun described in the application.

SEC. 4. No information or evidence obtained from an application to register a firearm required to be submitted or retained by a natural person in order to comply with any section of this Article or orders issued by the Chief of Police implementing this Article shall be used as evidence against such natural person in any criminal proceeding with respect to the violation of law occurring prior to or concurrently with the filing of the application containing the information or evidence; *Provided*, that this section shall not apply to any violation of subsections (a) and (b) of Art. 55, Sec. 1 respecting such application.

SEC. 5. A fee, in an amount fixed by the Commissioner, shall be paid upon the application for a registration certificate, but such fee shall not exceed \$2.00 for each pistol, rifle or shotgun registered, and the fee need not be uniform for all pistols, rifles or shotguns registered to a single person; *Provided*, that no natural person, regardless of the number of guns acquired or owned by him prior to the effective date of these regulations shall be required to pay a registration fee hereunder in excess of \$100 for the registration of all firearms acquired by him prior to the effective date of these Regulations.

SEC. 6. Any person within the District carrying or having in his immediate possession any pistol, rifle or shotgun for which a registration certificate has been issued as provided in these Regulations shall have such certificate on his person or within his immediate custody. Any person

having such possession of a pistol, rifle or shot gun shall upon demand exhibit such certificate to a law enforcement officer. The failure of any person to exhibit such certificate as provided herein shall be cause for the revocation of any and all certificates issued to him under these Regulations.

SEC. 7. It shall be the duty of the registered owner of a pistol, rifle or shotgun—

(a) to notify the Chief of Police in writing of the loss, theft or destruction of a registration certificate; or of any change of name or address from that recorded on a registration certificate, within forty-eight hours following discovery of such loss, theft or destruction, or of any change of name or address. Failure to notify the Chief of Police shall be grounds for revocation of the registration certificate.

(b) to notify the Chief of Police in writing of the sale, transfer or other disposition of any pistol, rifle or shotgun registered to him within forty-eight hours following such sale, transfer or disposition, except as provided for in Art. 55, Sec. 6 of these Regulations. Such notification shall contain—

(1) the name, residence and business address within the District, the occupation, and date of birth of the person to whom the pistol, rifle or shotgun has been sold or transferred;

(2) the make, model, caliber or gauge, manufacturer's identification number, serial number, and other identifying marks of the pistol, rifle or shotgun sold or transferred; and

(3) the number of the registration certificate issued to the registered owner.

(c) to return to the Chief of Police of registration certificate for any pistol, rifle or shotgun which is lost, stolen or destroyed, or which he sells, transfers or otherwise disposes of at the time he notifies the Chief of Police of such loss, theft, destruction, sale, transfer or other disposition.

SEC. 8. No person shall within the District—

(a) lend or give, or allow the use of a registration cer-

tificate issued to him by any other person for identification; *Except*, that when a registered owner of a pistol, rifle or shotgun lends or delivers the same to another person in accordance with the provisions of Art. 55, sec. 6 of these Regulations he shall deliver to such other person the registration certificate for each pistol, rifle or shotgun so loaned or delivered.

(b) represent himself as the owner of a registration certificate issued to another person.

SEC. 9. (Deleted)

SEC. 10. This Article of these Regulations shall not apply to—

(a) any person licensed under Art. 55 of these Regulations as a licensed retail dealer; *Provided*, that this exception shall only apply to pistols, rifles or shotguns acquired by such person in the normal conduct of his business and kept by such person at his place of business; and further *Provided*, that this exception shall not apply to such person for any pistol, rifle or shotgun kept by him for his private use or protection, or for the protection of his business; or

(b) any non-resident of the District participating in any lawful recreational activity in the District involving the use of pistols, rifles or shotguns; or transporting such pistol, rifle or shotgun to or from such lawful recreational activity; *Provided*, that such non-resident shall upon demand of any law enforcement officer exhibit proof that his possession of such pistol, rifle or shotgun is registered and legal in the jurisdiction in which he resides; or proof of residence in a jurisdiction which does not require registration of a pistol, rifle or shotgun;

(c) any officer, agent or employee of the District of Columbia or the Federal Government, or any officer, agent or employee of the government of any state or subdivision thereof, or any member of the Armed Forces of the United States, the National Guard or the Organized Reserves, when such officer, agent, employee or member is authorized to carry a pistol, rifle or shotgun and who is carrying a pistol, rifle or shotgun while on duty in the performance of his official authorized functions; or

' ARTICLE 52. REGULATING THE SALE AND
CARRYING OF FIREARMS IN THE
DISTRICT OF COLUMBIA.

SEC. 1(a). Any person who is not subject to any of the disabilities enumerated in Sec. 7 of the Act (D. C. Code, sec. 22-3207) shall be entitled to purchase a pistol within the District, and a seller is lawfully entitled to sell a pistol to such a person. No such person shall be denied the purchase of a pistol except as provided in the Act.

(b) Any person who meets the requirement of Sec. 6 of the Act (D. C. Code, sec. 22-3206) shall be entitled to carry a pistol within the District, and no such person shall be denied a license to carry a pistol except as provided in the Act.

(c) Any person who is not subject to any of the disabilities set forth in sec. 5(c) of this article shall be entitled to purchase and carry a rifle or shotgun in the District, and a seller shall be entitled to sell a rifle or shotgun to such a person.

SEC. 2(a). No person shall carry either openly or concealed on or about his person any pistol unless he possesses a valid license therefor issued to him pursuant to Sec. 4 of the Act (D. C. Code, sec. 22-3204); except as otherwise authorized by said section of the Act.

(b) No person shall purchase, own, possess or carry on or about his person any rifle or shotgun unless he possesses a valid rifle and shotgun license therefor issued to him pursuant to Sec. 5 of this Article.

(c) No person shall within the District sell or transfer any rifle or shotgun to a purchaser who is not a retail dealer licensed under Art. 54 of these Regulations; and no person who is not a licensed retail dealer shall purchase or otherwise acquire any rifle or shotgun from any seller unless—

(1) the purchaser exhibits to the seller a valid rifle and shotgun license issued according to Section 5 of this Article; and

(2) the seller forwards to the Chief of Police at the

time of the sale the purchaser's application to register the rifle or shotgun being sold pursuant to Art. 51, Sec. 2(a) of these Regulations; or within forty-eight hours following the sale, a written notification of sale pursuant to Art. 51, Sec. 8(b).

(d) No person within the District shall import or cause to be delivered to him within the District any rifle or shotgun unless he shall within forty-eight hours following delivery to him, submit an application to register the rifle or shotgun pursuant to Art. 51, Sec. 2(c) of these Regulations.

SEC. 3. Each person who is required by Sec. 8 of the Act (D. C. Code, Sec. 22-3204) to submit a statement when applying to purchase a pistol, or who is required by Sec. 4 of the Act (D. C. Code, sec. 22-3204) to have a license to carry a pistol, or who is required by sec. 2(b) of this Article to have a license to purchase or carry a rifle or shotgun shall submit such statement to the seller or an application for such license directly to the Chief of Police in the form and number prescribed by the Chief.

SEC. 4(a). Each statement on application to purchase a pistol shall be signed by the applicant purchaser and the seller, and each application for a license shall be signed by the applicant for the license.

(b) Each such statement or application shall contain that information prescribed by the Chief of Police which in his judgment is necessary to conduct efficient thorough investigations, and to effectuate the purposes of the Act and these Regulations. Each statement or application shall contain at least the following information:

(1) the full name, and any other name by which the applicant is or has been known;

(2) the home address, and any other address at which the applicant has resided within five years immediately prior to the submission of the statement or application.

(3) the present business or occupation, any business or occupation in which the applicant has engaged for five years immediately prior to the application, and the addresses of such businesses or places of employment;

- (4) the date and place of birth of the applicant;
- (5) the sex of the applicant;

(6) a statement by the applicant that he is not ineligible to purchase or possess a pistol under Section 7 of the Act (D. C. Code, sec. 22-3207) or not ineligible for a license to carry a pistol under Sec. 6 of the Act (D. C. Code, sec. 22-3206), or not ineligible under Sec. 5(c) of this Article to purchase or carry a rifle or shotgun; and indicating whether he has previously been denied any pistol, or rifle or shotgun license, registration certificate or permit by the Federal Government or any state government or subdivision thereof including the District Government; and whether he has been involved in any mishap involving a pistol, or rifle or shotgun, including the date, place, and circumstances and the names of any persons injured or killed;

(7) a statement by the applicant of his need to purchase or carry a pistol, rifle or shotgun, and his intended use of the same;

(8) the caliber, make, model, manufacturer's identification number, serial number, and any other identifying marks on the pistol, rifle or shotgun, to be purchased or carried; and

(9) the name and address of the seller, and his retail license number if he is a licensed dealer under Art. 55 of these Regulations.

(c) The Chief of Police may require each applicant to be fingerprinted if this in his judgment is necessary to conduct efficient and thorough investigations and to effectuate the purposes of the Act and these Regulations; *Provided*, that any person who has been fingerprinted by the Chief within five years prior to submitting his statement or application shall not be fingerprinted again if he offers other satisfactory proof of his identity. In addition, the Chief may require each applicant for a license to carry a pistol, or a rifle or shotgun to submit with his application two full face, black white photographs of himself. 1 $\frac{1}{2}$ by 1 $\frac{1}{2}$ inches in size which shall have been taken within thirty days of the filing of the application.

SEC. 5(a). No person shall be approved by the Chief of Police to purchase a pistol if the Chief after investigation determines that a pistol could not lawfully be sold to such person under Section 7 of the Act (D. C. Code, Sec. 22-2307).

(b) No person shall be issued a license to carry a pistol by the Chief of Police if the Chief after investigation determines that such person is ineligible for such license under Section 6 of the Act (D.C. Code, Sec. 3206).

(c) Except as provided for in subsection (d) of this section, no person shall be issued a license to purchase or carry a rifle or shotgun if the Chief of Police determines after investigation that such person—

(1) is under the age of twenty-one years;

(2) is not of sound mind; *Provided*, that the Chief of Police shall determine that the person is not of sound mind to purchase, possess and carry a rifle or shotgun if he determines that such person has been adjudicated mentally incompetent, or has been acquitted of any criminal charge by reason of insanity by any court; or has been adjudicated a chronic alcoholic by any court; and *Provided*, that three years after such conviction adjudication or acquittal, the Chief of Police shall disregard the disabilities of this subsection if, after an investigation, he is satisfied that the applicant is mentally and physically capable of owning, possessing and using a pistol in a safe and responsible manner.

(3) is a drug addict; *Provided*, that the Chief of Police shall determine that the person is a drug addict if he determines that such person (i) is an abusive user of narcotic drugs as defined by section 4731 of the Internal Revenue Code 1954, as amended (Aug. 16, 1954, 68A Stat. 557, ch 736; Apr. 22, 1960, 74 Stat. 57 Pub. L. 88-429, sec. 4(a), (b); 26 U.S.C., sec. 4731); or (ii) is an abusive user of dangerous drugs as defined by or under the Act entitled the "Dangerous Drug Act for the District of Columbia", approved July 24, 1956 (70 Stat. 612, title II, sec. 202; D. C. Code, sec. 33-701);

(4) has been convicted in any jurisdiction of a crime

involving the use of physical force against a person punishable by imprisonment for more than one year, or is under indictment for such a crime; or

(5) he has been convicted in any jurisdiction of any of the following offenses punishable by imprisonment for less than one year: any offense involving a physical assault; any offense committed while carrying a firearm or weapon; using, possessing or selling any narcotic or dangerous drug; or any violation of a law restricting the sale, receipt, possession, use or transportation of a firearm or destructive device; *Provided*, that three years after such conviction, the Chief of Police may disregard the disabilities of this subsection if, after an investigation, he is satisfied that the applicant is mentally and physically capable of owning, possessing and using a rifle or shotgun in a safe and responsible manner; or

(6) suffers from a physical defect which would make it unsafe for him to use a rifle or shotgun; or

(7) has indicated by threatening speech or other behavior that he is likely to make unlawful use of a rifle or shotgun; or

(8) has been adjudicated negligent in a firearms mishap causing death or injury to another human being; or

(9) is otherwise ineligible to purchase or possess a pistol under section 3 of the Act (D. C. Code, sec. 22-3203).

(d) The Chief of Police shall deny a rifle or shotgun license if the Chief determines, after investigation or test, that the applicant—

(1) does answer to one or more of the descriptions enumerated in subparagraphs (c)(1) through (c)(9) of this section; or

(2) has failed to demonstrate satisfactorily a knowledge of the laws of the District of Columbia pertaining to rifles and shotguns and the safe and responsible use of the same in accordance with tests and standards prescribed by the Chief of Police; or

(3) has vision less than that required to obtain a valid driver's license under the laws of the District; *Provided*, that possession of a valid driver's license shall be *prima facie* evidence that an applicant's vision is not deficient.

(e) The Chief of Police shall issue to applicant a numbered rifle and shotgun license if the Chief determines, after investigation that the applicant does not answer to any of the descriptions enumerated in subparagraphs (c)(1) through (c)(9) of this section.

(f) The Chief of Police may issue to an applicant between the ages of eighteen and twenty-one years old who is otherwise qualified under subsection (c) a numbered restricted rifle and shotgun license if—

(1) the application is accompanied by a signed statement by the parent or guardian of the applicant (i) that the applicant has the permission of the parent or guardian to use a rifle or shotgun, and (ii) that the parent or guardian assumes civil liability for all damages resulting from the actions of the applicant in the use of the rifle or shotgun; and

(2) if the applicant is not disqualified by subsection (d) in any respect except his age.

SEC. 6. Any person in the District carrying or having in his immediate possession any pistol for which a license has been issued to him pursuant to sec. 6 of the Act (D. C. Code, sec. 22-3206), or any rifle or shotgun for which a license has been issued to him pursuant to sec. 5(e) or (f) of this Article, shall have such license within his immediate possession, and upon demand of any law enforcement officer shall exhibit his license.

SEC. 7. Any rifle and shotgun license issued under this Article—

(a) may include such reasonable restrictions and prohibitions consistent with applicable laws of the District with respect to the possession, purchase or carrying about of such rifle or shotgun as the Chief of Police may deem essential to the public safety or in the public interest; any license issued under section 3(d) of this Article shall be limited to use of the rifle or shotgun for sport or recreation, only during daylight hours, and only in the presence and under the supervision of a person licensed under section 5(e) of this Article.

(b) may be revoked by the Chief of Police when he has

reason to believe that the licensee no longer has the qualification requisite for the issuance of such a license: *Provided*, that the Chief of Police shall first issue and serve upon the licensee, an order to show cause why his license should not be revoked. This licensee may request in writing a hearing before the Chief within 5 days, and the Chief shall grant such hearing within 15 days. If the licensee does not request a hearing or show proper cause why his license should not be revoked the Chief of Police shall issue and serve upon the licensee an order revoking the license and no license issued under these Regulations shall be in effect beyond the date of an order revoking such a license.

(c) shall expire five years after issuance unless sooner revoked.

SEC. 8(a). Section 2(a) of this Article shall not apply to—

(1) any person directly transporting a registered pistol to the business address of a licensed dealer for purpose of repair or sale, or to any person directly transporting such pistol from the business address of a licensed dealer to his residence, place of business or other land owned by him after the purchase or repair.

(2) any person directly transporting a registered pistol to the residence, place of business or land owned by the purchaser after the private sale of such pistol approved by the Chief of Police;

(3) any person directly transporting any pistol to any police precinct house to surrender the same to the Chief of Police;

(4) any nonresident of the District actively participating in any lawful recreational activity in the District involving the use of a pistol, or transporting such pistol directly to or directly from such lawful recreational activity; *Provided*, that such nonresident shall upon demand of any law enforcement officer exhibit proof that his carrying about of a pistol is permitted and legal in the jurisdiction in which he resides; or proof of residence in a jurisdiction which does not license the carrying about of a pistol;

(5) any officer, agent or employee of the District of Columbia or the Federal Government, or any officer, agent or employee of the government of any state or subdivision thereof, or any member of the Armed Forces of the United States, the National Guard, or the Organized Reserves, when such officer, agent, employee or member is authorized to carry a pistol, and is carrying a pistol while on duty in the performance of his official authorized functions; or

(6) the regularly enrolled members of any organization duly authorized to purchase or receive such weapons from the United States, provided such members are at or are going to or from their places of assembly or target practice as required by Section 5 of Act (D. C. Code, Sec. 22-3205).

(b) Any pistol carried by any person not having a license issued under these Regulations shall be carried in a closed container or securely wrapped, and while being carried shall be kept unloaded. Containers of such pistols or such securely wrapped pistols shall be carried in open view.

SEC. 9(a). Section 2(b) of this Article shall not apply to—

(1) any person directly transporting any rifle or shotgun to any police precinct house to surrender the same to the Chief of Police;

(2) any nonresident of the District actively participating in any lawful recreational activity in the District involving the use of a rifle or shotgun, or transporting a rifle or shotgun directly to or directly from such lawful recreational activity; *Provided*, that such nonresident shall upon demand of any law enforcement officer exhibit proof that his carrying about of a rifle or shotgun is permitted and legal in the jurisdiction in which he resides; or proof of residence in a jurisdiction which does not license the carrying about of a rifle or shotgun;

(3) any officer, agent or employee of the District of Columbia or the Federal Government, or any officer, agent or employee of the government of any state or subdivision thereof, or any member of the armed forces of the United

States, the National Guard or the Organized Reserves, when such officer, agent, employee or member is authorized to carry a rifle or shotgun, and who is carrying a rifle or shotgun while on duty in the performance of his official authorized functions;

(4) any person between the ages of 15 and 18 years of age uses a rifle or shotgun as authorized by Art. 55, sec. 8(b) of these Regulations.

(b) [Superseded by the Federal Firearms Act.]

(c) Any rifle or shotgun being carried shall, except when lawful use is imminent, be unloaded and securely wrapped or encased in a closed container.

ARTICLE 53. REGULATING THE SALE OF FIREARM AMMUNITION

SEC. 1. No person shall within the District sell or otherwise transfer ammunition for a firearm to another unless

(a) The sale or transfer is made in a face-to-face transaction;

(b) The purchaser exhibits at the time of the sale or transfer a valid certificate of registration issued under these regulations;

(c) The ammunition sold or transferred is of the same caliber or gauge as the firearm described in the certificate of registration and suitable for use therein;

(d) The purchaser signs a receipt for the ammunition, which receipt shall be maintained by the seller for six months.

SEC. 2. No person shall within the District of Columbia purchase or possess ammunition for a firearm unless he is the holder of a valid certificate of registration issued under the regulations; and unless the ammunition is of the same gauge or caliber as the firearm described in the certificate of registration issued to such person.

SEC. 3. For purposes of Secs. 1 and 2 above, a valid firearm registration certificate issued by the United States or any state or subdivision thereof shall be sufficient to authorize ammunition sales to and purchases by persons who are not residents of the District.

SEC. 4. This Article shall not apply to sales or transfers to government agencies, duly appointed law enforcement officers, or persons duly licensed as dealers of weapons under Section 10 of the Act (D. C. Code, sec. 23-3210).

SEC. 5. This Article shall not apply to bona fide collectors of ammunition who are purchasing ammunition for their collections. Any such collector may obtain an ammunition collector's certificate from the Chief of Police, upon proof, submission of a statement, verified by the Chief, that he is, in fact, a bona fide collector. This certificate shall be exhibited to the seller whenever the collector purchases ammunition for his collection. The seller shall keep records of all ammunition sales to collectors for six months.

ARTICLE 54. REGULATING AND LICENSING DEALERS IN DANGEROUS WEAPONS

SEC. 1(a). No person shall within the District engage in the business of selling, or manufacturing, or repairing any pistol, rifle, shotgun, or ammunition without first obtaining a license as provided in sec. 2 of this Article.

(b) The Commissioner may grant licenses, effective for not more than one year from date of issue, permitting the licensee to sell, or to manufacture, or to repair pistols, rifles, shotguns or ammunition. Whenever any such licensee breaches any condition upon which his license was issued or violates any provision of these Regulations or of any provision of section 7 of the Act (D. C. Code, sec. 22-3207), which is applicable to any such licensee or any applicable regulation made pursuant to such Act, the license shall be suspended or revoked and the licensee shall be subject to punishment as provided in these Regulations.

(c) The Commissioner is authorized and empowered to fix, and from time to time increase or decrease, fees for any services rendered under this Article. The Commissioner shall increase, decrease, or fix fees in such amount as will in the judgment of the Commissioner approximate the cost to the District of administering this Article.

SEC. 2(a). The Chief of Police shall within 30 days of receipt of an application issue a license to deal in firearms to any person who is not ineligible to purchase a pistol, rifle or shotgun under these Regulations and who has not

previously violated any of the conditions set forth in Art. 54, secs. 5 and 6 of these Regulations.

(b) Each application for a license to deal in firearms or ammunition shall be in the form prescribed by the Chief of Police; and shall be signed by the Chief of Police; and shall be signed by the applicant; and shall contain—

- (1) the full name of the applicant;
- (2) the home address of the applicant;
- (3) the address of the establishment to be licensed and the principal place of business of the applicant;
- (4) and such other information as may be required by the Chief of Police.

SEC. 3. A license to deal in firearms or ammunition may be revoked or suspended by the Chief of Police when he has reason to believe the licensee—

(a) ceases to qualify for a license under Sec. 2(a) of this Article; or

(b) fails to comply with any of the conditions imposed by Art. 54, secs. 5 and 6; *Provided*, that the Chief of Police shall first issue and serve upon the licensee, an order to show cause why his license should not be revoked. The licensee may request in writing a hearing before the Chief within 5 days, and the Chief shall grant such hearing within 15 days. If the licensee does not request a hearing or show proper cause why his license should not be revoked the Chief of Police shall issue and serve upon the licensee an order revoking the license and no license issued under this Article shall be in effect beyond the date of an order revoking such a license.

SEC. 4(a). Any dealer within the District who transports or delivers firearms to another dealer in the District shall, before delivery of the firearm, furnish to the Chief of Police an invoice listing his name, his home and business addresses, his license number, the name and address of the dealer to whom such firearms are to be delivered, the place of origin of the shipment, the quantity of firearms transported, and the serial number of each firearm in the shipment.

(b) If such shipment is by common carrier, a copy of

the invoice shall be delivered to the common carrier. No common carrier shall knowingly deliver a shipment of firearms to a dealer within the District without having received a copy of such invoice. The copy of the invoice shall be left with the dealer at the time of delivery.

(c) If such shipment is by other than common carrier, the copy of the invoice shall be furnished to the dealer at the time of delivery.

SEC. 5(a) No person licensed under this Article shall sell a pistol, rifle, shotgun, or ammunition to any person whom he knows or has reasonable cause to believe is ineligible to own a pistol, rifle or shotgun under Section 7 of the Act (D.C. Code, Sec. 22-3207) or Article 52, Sec. 5(c) of these Regulations.

(b) Each licensed dealer shall keep at his place of business a true record in book form of all pistols, rifles, and shotguns in his possession or under his control which he has acquired to sell or offer for sale, and shall, upon demand exhibit such record book to any policeman or law enforcement officer exercising his official duty. Each licensed dealer must enter upon such record book for each pistol, rifle, and shotgun in his possession the information required for pistols by section 10 of the Act (D.C. Code, sec. 22-3210 (4), and the name and address of the purchaser when such items are sold.

(c) Each licensed dealer shall submit a periodic report to the Chief of Police on all sales of ammunition. The Chief of Police shall fix the times when such reports are due, and he may establish such other procedures under this subsection as he deems necessary. Such periodic reports shall contain—

(1) the name and address of each purchaser of ammunition during that period;

(2) the number on the registration certificate issued under Article 2 of these Regulations which exhibited by the purchaser; and

(3) the quantity and description of the ammunition sold to each purchaser during the period.

(d) Each licensed dealer shall otherwise conform to all

provisions of the Act, and nothing contained in these Regulations shall be construed to excuse noncompliance with any provision of the Act.

SEC. 6(a) No licensed dealer shall display any pistol, rifle or shotgun, or ammunition in windows visible from a street or sidewalk. All pistols, rifles and shotguns and ammunition shall be kept in a securely locked place at all times except those firearms or ammunition being shown to a customer, repaired or otherwise worked on.

(b) No licensed dealer shall knowingly permit any person in his establishment to display, sell or repair any pistol, rifle, shotgun or ammunition if such person would not be qualified for a licensed to carry a pistol issued under Section 6 of the Act (D. C. Code, Sec. 22-3206) or if such person has not received from the Chief of Police approval to display, sell or repair any pistol, rifle, shotgun or ammunition in said establishment, *Provided*, that this subsection shall not apply to any relative of the licensed dealer who is eighteen years old or older, if otherwise qualified under Section 6 of the Act (D. C. Code, Sec. 22-32-6).

SEC. 7. Beginning one year after the effective date of these Regulations, no retail dealer licensed under this Article shall sell or offer for sale in the District any pistol, rifle or shotgun, which does not have imbedded into the metal portion of such pistol, rifle or shotgun a unique manufacturer's identification number or serial number unless the retail dealer shall have imbedded into the metal portion of such pistol, rifle or shotgun a unique dealer's identification number.

SEC. 8(a) No pawnbroker in the District shall sell or offer for sale any firearm or ammunition, or loan money secured by mortgage, deposit or pledge of any firearm or ammunition without obtaining a license under this Article.

(b) No licensed dealer shall take or receive any firearm by way of mortgage, pledge or pawn without also taking and retaining during the term of such pledge or pawn, the registration certificate of the firearm mortgaged, pledged or pawned. If such firearm is not redeemed, the dealer shall return the registration certificate to the Chief of Police and register the firearm in his own name.

ARTICLE 55. MISCELLANEOUS PROVISIONS

SEC. 1(a) It shall be unlawful for any person purchasing any pistol, rifle, shotgun or ammunition, or applying for any certificate of registration or license under these Regulations, or in giving any information pursuant to the requirements of these Regulations, to give false information or offer false evidence of his identity.

(b) It shall be unlawful for anyone to forge or alter any application, registration certificate, temporary evidence of registration, or license submitted, retained or issued under these Regulations.

(c) It shall be unlawful for any person within the District to change, alter, remove, or obliterate the name of the maker, model, manufacturer's identification number, serial number, or other mark of identification on any pistol, rifle or shotgun *Provided*, that nothing contained in this section shall apply to any officer or agent of any department or agency of the United States or the District Government who is engaged in research or experimental work.

(d) It shall be unlawful for any person within the District to own, possess, sell, offer for sale, purchase or offer to purchase any destructive device, or military type weapon including weapons known as hand grenades, cannons, anti-tank guns and bazookas; *Provided*, that this section shall not apply to any agency or department of the District of Columbia or Federal Government or to any person licensed or authorized by the Federal Government to own, possess, sell or purchase such weapons.

SEC. 2(a) If any person within the District voluntarily delivers and abandons to the Metropolitan Police Department any pistol or rifle or shotgun during an amnesty period which the Chief of Police is hereby authorized to proclaim at regular intervals, the voluntary delivery of such weapon shall preclude the arrest and prosecution of such person on a charge of violating any provision of these Regulations with respect to the weapon voluntarily delivered. A voluntary delivery of any pistol or rifle or shotgun shall be made to any police precinct and such weapon shall be securely wrapped and unloaded.

(b) Any person within the District may summon a police officer to his residence or place of business for the purpose of voluntarily delivering to a police officer a pistol or rifle or shotgun which shall be securely wrapped and unloaded.

SEC. 3 Notwithstanding any provision of Art. 52 or Art. 54 of these Regulations, an application to transfer a pistol or rifle or shotgun license shall not be required for the transfer of a pistol, rifle or shotgun upon the death of an owner thereof to his heir or legatee whether the transfer be by testamentary bequest or by the laws of intestacy; *Provided*, that the heir or legatee shall be subject to all other provisions of these Regulations; and *Provided*, that if the heir or legatee does not qualify to possess or carry the pistol, rifle or shotgun under these Regulations, he may possess the same for the purposes of sale for a period not to exceed 60 days.

SEC. 4(a) When an application for a registration certificate under Art. 51 or a license under Art. 52 or Art. 54 of these Regulations is denied, or when the Chief of Police fails to act on any such application within 30 days of its receipt, or when such registration certificate or license is revoked as provided for these Regulations, the aggrieved party may within five days appeal in writing to the Commissioner, and the Commissioner shall schedule a hearing before him within 15 days after the appeal has been made. Any ruling from such hearing and any order of the Commissioner denying an application for a dealer license made pursuant to Art. of these Regulations shall be subject to appropriate judicial review.

(b) The Commissioner is authorized to make orders to carry out the purposes of these Regulations, including without limitation orders prescribing the form, content, and requirements respecting the number of copies of reports, applications, or certificates required under or authorized by these Regulations and for recording and identifying each firearm owned, possessed or under the custody or control of a person; providing for the keeping and disposition of records by persons selling, purchasing, manufacturing, repairing, or delivering firearms and ammunition

covered by these Regulations and further regulating the conduct of the business required to be licensed under these Regulations.

(c) The Commissioner may prohibit the sales of ammunition when he determines that the design, construction or material composition of such ammunition makes it unsuitable or unsafe for any lawful use.

SEC. 5 Whenever any firearm, ammunition or destructive device is found within the District in an automobile, boat or other vehicle, or in any dwelling unit, business establishment or other structure or building, it shall be *prima facie* evidence that such firearm, ammunition or destructive device is in the possession of the occupants of the vehicle, structure or building; or, if the vehicle, structure or building is unoccupied, it shall be *prima facie* evidence of possession by the registered owner in the case of a vehicle, or by the last known occupants or owner in the case of a structure or building.

SEC. 6 Except for transfers to licensed dealers, no person shall loan or otherwise allow another person to possess, carry or use any firearm unless such firearm is being loaned for a legitimate purpose, and for a period not to exceed 30 days; and unless—

"(a) the person to whom the firearm is loaned possesses a valid license for such firearm issued to him pursuant to section 6 of the Act (D. C. Code, Sec. 22-32-6) or to Art. 52 of these Regulations; or

(b) such person to whom the firearm is loaned is at least fifteen years of age, does not possess a valid license because of his age, and is a member or student of an organization or school which teaches firearm safety and use. Where such circumstances exist, it shall be lawful to loan a rifle or shotgun to such person for instruction, military or *military type* drill, or legitimate recreational activity; *Provided*, that the use of the rifle or shotgun is immediately supervised by a person licensed pursuant to Art. 52 of these Regulations; and *Provided*, the rifle or shotgun is registered to the organization, school, parent or guardian of the user; and *Further Provided*, that the rifle or shotgun is

surrendered immediately following its use to the organization, school, or parent or guardian of the user.

SEC. 7(a) Except as provided in the immediately preceding section, no person shall within the District keep any firearm or ammunition for, or intentionally make any firearm or ammunition available to any person who would not qualify under these Regulations for a License for such firearm.

(b) No person shall hold a firearm or loan any money on a firearm as security for the payment or repayment of any debt or pledge, except as otherwise provided for in Art. 55, sec. 8 of these Regulations.

SEC. 8 No person shall within the District sell or otherwise transfer a firearm or ammunition to a purchaser who is under the influence of alcohol or a narcotic or dangerous drug. No person shall within the District carry or use any firearm while under the influence of alcohol or a narcotic or dangerous drug.

SEC. 9 "The Chief of Police is hereby authorized to issue and promulgate such other orders, rules and regulations as he deems necessary to carry out the purposes of the Act and these Regulations."

SEC. 10(a) "Applications required by these Regulations for registration or licensing of firearms possessed, purchased or acquired by, or delivered to, persons within the District prior to the effective date of these regulations must be submitted within 120 days after that date. No such person shall be deemed in default under the registration provisions of these regulations if his application to register is submitted within that time. Nor shall any such person be deemed in default under the licensing provisions of these regulations while his application for a license, submitted within that time, is still pending.

(b) The registration and licensing requirements established by these regulations shall be immediately effective, from the effective date of these Regulations, for firearms purchased or acquired by, or delivered to, persons within the District after that date."

SEC. 11 Any person who violates any provision of these

Regulations shall, upon conviction be fined not more than \$300, or be imprisoned for not more than ten days; *Except* that any dealer who violates any provision of Article 55 of these Regulations shall upon conviction be fined not more than \$300 or be imprisoned for not more than ninety days; and *Provided*, that the penalties prescribed herein for violating these Regulations shall not supersede but shall supplement all statutes, other regulations, or municipal actions of the District of Columbia or the United States under which similar conduct is prohibited and penalties for engaging therein are prescribed.

SEC. 12 Any provision of any Regulation of the District inconsistent with any provision of these Regulations is hereby repealed.

SEC. 13 If any provision of these Regulations or the application thereof to any person or circumstance is held invalid, the remainder of these Regulations and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

SEC. 14 "These Regulations shall become effective on February 15, 1969; provided that the Chief of Police may accept applications for registration of firearms immediately upon adoption of these Regulations."